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STREAM POLLUTION: A DIGEST OF JUDICIAL
DECISIONS AND A COMPILATION OF LEGIS-
LATION RELATING TO THE SUBJECT

Stanley D. Montgomery, et al

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STREAM POLLUTION

A DIGEST OF JUDICIAL DECISIONS AND A COMPILATION
OF LEGISLATION RELATING TO THE SUBJECT

By

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ABSTRACT OF CONTENTS.

	Page.
INTRODUCTION	7
I. DIGEST OF JUDICIAL DECISIONS RELATING TO BASIC RULE OF COMMON LAW.	9
The basic rule of the common law has been stated to be that each riparian proprietor has the right to have the stream come down to him with its quality unimpaired and with its quantity undiminished.....	9
From the fact that each riparian proprietor has a dual interest in the stream, it logically and necessarily results that each riparian proprietor is permitted to make of the stream a reasonable use and no more.....	9
And the true rule may be stated to be that each riparian proprietor has the right to have the stream flow through or past his land with its quality unimpaired and its quantity undiminished except in such manner and to such extent as may result from a reasonable use of the stream by riparian proprietors above him.....	10
Courts have generally favored those uses of a stream that may be classed as natural, such as domestic use, watering of cattle, etc., as distinguished from artificial uses like manufacturing.....	12
But although a use may be classed as a natural one, if it be exercised immoderately or excessively, it becomes unreasonable and illegal.....	14
Ordinarily the drainage of surface water can not be made the ground of complaint even though it causes injury to a lower riparian proprietor...	14
The owner of lands drained by a watercourse, may change and control the natural flow of the surface water thereon, and by ditches or otherwise accelerate the flow, or increase the volume of water which reaches the stream, and if he does this in the reasonable use of his own premises, he exercises only a legal right, and incurs no liability to a lower proprietor.....	15
But one draining the surface water into a natural stream will not be permitted to cause the capacity of the stream to be exceeded so as to overflow to the injury of a lower riparian proprietor.....	15
While the riparian proprietor may accelerate the run-off of surface water into a natural stream he will not be permitted to divert it from its natural course.....	16
Discharging waste from a manufacturing plant or mine into a stream is not a natural use of the stream and if done to the material injury of the lower riparian proprietor, creates a liability for damages.....	17
And the fact that a manufacturer is engaged in an important industry, the operation of which benefits the public, will not be held to excuse him for polluting the stream to the injury of the lower proprietor.....	23
It has been held that even where a lower proprietor can, at comparatively small expense, protect himself against the injury caused by an upper proprietor engaged in an important business, he is not bound to do so.....	25
The doctrine as to mining uses announced in the Sanderson case, followed only in Pennsylvania and Indiana, and expressly repudiated elsewhere..	31
It has been held that evidence of the custom of the region in which the stream is located may be relevant as bearing upon the reasonableness of a given use.....	43

1	DIGEST OF JUDICIAL DECISIONS, ETC.—Continued.	Page.
	But other courts have held that evidence of custom can not be relevant..	44
	It has been intimated that new and unusual uses will be regarded more jealously than common and customary ones.....	46
	The fact that others than the defendant or even the plaintiff himself are polluting the same stream will not excuse the defendant.....	46
	But evidence that others than the defendant have contributed to the pollu- tion of a stream is admissible for the purpose of showing that not all the damage sustained by the plaintiff was caused by the defendant.....	49
	Where a stream has been polluted from various causes for longer than a prescriptive period to such an extent that it has become a common sewer, the right to pollute it can not be challenged.....	50
	When a stream is polluted by an upper riparian owner in an unreasonable way or to an unreasonable extent, any lower riparian proprietor who is injured thereby has a right of action at common law for the actual damages sustained by him.....	51
	It is improper in an action for damages for several riparian proprietors to join as plaintiffs. Each should sue separately for the damages he has sustained	52
	It has been held to be improper to join several defendants in an action for damages arising from the pollution of a stream to which the various de- fendants have contributed independently.....	53
	There are some decisions to the contrary, the reasoning being that it is im- possible to separate the injury done by the several contributors and that to deny their joint liability is to leave the lower proprietor without remedy for the injury he has sustained.....	54
	So where the cause of injury to a stream has been maintained by succeeding proprietors, the lower proprietor will not be permitted to join them in an action for damages but must sue each separately.....	57
	An unreasonable use of a stream which pollutes it to the injury of a lower riparian proprietor will be enjoined.....	57
	Several who contribute individually to the pollution of the same stream may be joined as defendants in one suit for an injunction.....	59
	Several individuals who are injured by the pollution of the same stream may join in an action for an injunction.....	60
	To entitle a riparian owner to an injunction against polluting a stream, the injury of which he complains must be real and material.....	61
	But although the injury to the stream must be real in order to entitle the plaintive to injunctive relief, it does not follow that the plaintiff must have suffered any actual damage in his present use of the stream.....	61
	In suits for injunction against pollution of streams the general rule that a nuisance will not be enjoined in an equity suit until its existence has first been established in an action at law does not obtain, the reason being that the delay incident to the establishing of the right in an action at law might cause irreparable injury.....	65
	Where the effect produced by the pollution of a stream amounts to a public nuisance, the State by its attorney general may bring an action for an injunction against the continuance of the pollution.....	67
	As against a lower riparian proprietor a right to pollute a stream may be acquired by prescription.....	68
	But where a right by prescription is acquired, it is limited to the use actu- ally made during the entire statutory period.....	68
	A right to create a public nuisance can not be acquired even by prescription	70
	Nor can a right by prescription be acquired which will authorize the doing of anything forbidden by statute.....	72

	Page.
I. DIGEST OF JUDICIAL DECISIONS, ETC.—Continued.	
By the great weight of authority, municipalities have no greater rights than individuals to pollute water courses and must respond in damages for an injury caused to a lower riparian proprietor and may be enjoined from continuing the pollution.....	72
A municipality is not liable for the pollution of a stream caused by the ordinary drainage of surface water.....	78
But where a city alters the natural course of drainage and causes material increase in the quantity of the flow in a given direction and material injury results, the city is liable for the injury.....	81
Nor will a city be permitted to build artificial drains and thereby conduct surface water into a stream in such quantities as to exceed the capacity of the stream and cause the same to overflow to the injury of a lower proprietor.....	84
At common law a city seeking to maintain the purity of a stream, as a lower riparian proprietor, has no greater right than an individual to limit the use of the stream by upper proprietors.....	85
II. DIGEST OF JUDICIAL DECISIONS RELATING TO STATUTES.....	88
Introduction.....	88
To protect its streams against pollution, a State may, without providing compensation, curtail the rights of the riparian owner in his use of the stream, according to the weight of authority.....	89
Even though a riparian owner may have acquired a right by prescription as against lower proprietors on the stream to pollute the same, he is nevertheless amenable to legislation enacted under the police power for the preservation of the purity of the stream and can not claim compensation unless the same is provided in the legislation.....	99
Such legislation is not rendered invalid by the fact that it is made applicable to a portion of the State only, provided no unreasonable or arbitrary classification be adopted.....	101
Most courts construe strictly statutes for this purpose and hold that such construction does not render them unconstitutional.....	105
Some courts have held that statutes enacted for the preservation of streams should be liberally construed in favor of the riparian owner.....	109
A State may leave to a commission or board the details of legislation for protection of its waters.....	114
The power of the State to authorize the discharge of sewage into streams to the injury of lower proprietors is limited by constitutional provisions.....	117
By the great weight of authority statutes will not be construed as authorizing municipalities to create nuisances by the discharge of sewage, even in those jurisdictions where the constitutional inhibition does not obtain....	124
Table of cases.....	133
APPENDIX I. Treaty with England as to boundary waters between United States and Canada.....	147
APPENDIX II. COMPILATION OF STATE LAWS AND REGULATIONS.....	148

STREAM POLLUTION.

A DIGEST OF JUDICIAL DECISIONS AND A COMPILATION OF LEGISLATION RELATING TO THE SUBJECT.

INTRODUCTION.

In connection with the studies of the pollution of streams and other water supplies being conducted by the United States Public Health Service, it was found necessary to ascertain the precise status of legislation relating thereto, inasmuch as the whole subject of the control of stream pollution is bound up with the limitations imposed by common law and statute. Although a knowledge of the laws themselves was required, more important was knowledge of court decisions and an analysis of the trend of these decisions. The courts have devoted continuous attention to this problem. In fact, until recent years, when the States began enacting specific legislation on the subject, the rights of riparian owners and others suffering from pollution of their water supplies were enforced by court decisions interpreting the provisions of the common law. Even now it is to these decisions more than to the law itself that one must turn for an understanding of how the problem is being met from a legal point of view. For these reasons a digest of court decisions was prepared and is given herewith, supplemented by a compilation¹ of all of the State laws and health regulations which seem closely related to the subject of the pollution of streams. The digest itself begins with a discussion of the basic rule of common law—that each riparian proprietor has the right to have the stream come down to him with its quality unimpaired and with its quantity undiminished—and indicates the manner in which this rule has been qualified by other common-law principles and by changing conditions. This section is followed by a discussion of the interpretation given the important statutes on the subject in court decisions.

The digest bears very closely upon the subject of the control of stream pollution, and the limitations of such control under the law and under the precedents of the courts are indicated. The obliga-

¹ In general the compilation includes laws in force at the end of the 1917 sessions of the various State legislatures. See p. 149, for list of States of which this is not true.

tion imposed by the Government upon itself in the treaty with England regarding the boundary waters between the United States and Canada (January 11, 1909) is emphasized.

It is hoped that the volume will throw some light upon the difficult questions which the increasing use of streams for both water supplies and sewage disposal brings up. This double use of the streams of the country has made the whole subject of the pollution of streams of great importance, and any clarification of the problem which a study of the common law and statutes can give in this matter would appear worth while. It may also be expected that such a study will aid in bringing about more uniformity in the legislation on stream pollution in the different States.

I. DIGEST OF JUDICIAL DECISIONS RELATING TO BASIC RULE OF COMMON LAW.

**THE BASIC RULE OF THE COMMON LAW HAS BEEN STATED TO BE THAT
EACH RIPARIAN PROPRIETOR HAS THE RIGHT TO HAVE THE STREAM
COME DOWN TO HIM WITH ITS QUALITY UNIMPAIRED AND WITH ITS
QUANTITY UNDIMINISHED.**

Thus it has been said:

Every owner of land through which a stream of water flows is entitled to the use and enjoyment of the water, and to have the same flow in its natural and accustomed course, without obstruction, diversion, or corruption. The right extends to the quality as well as to the quantity * * *. (*Holsman v. Boiling Spring Bleaching Co.* (14 N. J. Eq. 335), decided 1862.)

But expressions like the above are extreme statements of the rule and can not be accepted literally.

FROM THE FACT THAT EACH RIPARIAN PROPRIETOR HAS A DUAL INTEREST IN THE STREAM, IT LOGICALLY AND NECESSARILY RESULTS THAT EACH RIPARIAN PROPRIETOR IS PERMITTED TO MAKE OF THE STREAM A REASONABLE USE AND NO MORE.

That is to say, each riparian proprietor is interested, on the one hand, in having the water come down to him in its natural state and in its full volume. On the other hand, he is interested in making the largest use of the stream which his convenience or interest may dictate; and since almost any use of the stream has some tendency either to diminish the volume or to lessen its purity, or both, it follows that a rule which would preclude each riparian owner from polluting the stream at all or from diminishing its volume at all would defeat its own purpose; and this has been recognized by the courts. Thus, in the case of *Tetherington v. Donk Bros. Coal & Coke Co.* (232 Ill. 522), decided February 20, 1908, the supreme court said:

The law has been announced in this court in numerous decisions that it is the right of every owner of land over which a stream of water flows to have it flow in its natural state and with its quality unaffected; that the "right to a stream of water is as sacred as a right to the soil over which it flows. It is a part of the freehold of which the owner can not be disseized except by due process of law, and the pollution of a stream constitutes the taking of property, which may not be done without compensation." *City of Kewanee v. Otley* (204 Ill. 402); *Reidler v. Sanitary District* (211 id. 628).

Appellant's argument is, that the enforcement of the right of the lower riparian owner literally as laid down in the instruction and the authorities would exclude the riparian owners above from the enjoyment of any use of the stream, except such as would not diminish the quantity or impair the quality of

the waters. Language such as we have quoted from the decision above referred to is to be understood as a strong expression of the general principle employed in cases in which it did not become necessary to consider how far there might be exceptions, or how far one might be heard to complain of insignificant injuries, which left the stream to flow on without substantial change. The rights of the several riparian owners on the watercourse are relatively equal. While the right to acquire and enjoy property is an absolute right which existed back of all constitutions and laws, still the means of acquisition and the manner of enjoyment are subject to regulation by law and are relative. In a strict and highly technical sense any use of a stream of water may diminish the quantity or impair the quality in some infinitesimal degree, but it is not this sense in which the law assures the right of a riparian owner to the use of the stream. It would be of no avail to a landowner to give him such a right, for in turn the next lower riparian owner would have the same strict right to have the stream come to him in like condition, so that no one would have a right to do more than stand on the shore and see the stream flow by him. The right of each proprietor to use the stream is subject to a like reasonable right in other riparian owners, and each must submit to such reasonable use by his neighbor so long as such use does not inflict substantial injury upon other owners who have a like right. When questions arise between riparian owners respecting the right of one to make a particular use of the water in which they have a common right, the right will generally depend on the reasonableness of the use and the extent of the detriment to the lower owner.

AND THE TRUE RULE MAY BE STATED TO BE THAT EACH RIPARIAN PROPRIETOR HAS THE RIGHT TO HAVE THE STREAM FLOW THROUGH OR PAST HIS LAND WITH ITS QUALITY UNIMPAIRED AND ITS QUANTITY UNDIMINISHED EXCEPT IN SUCH MANNER AND TO SUCH EXTENT AS MAY RESULT FROM A REASONABLE USE OF THE STREAM BY RIPARIAN PROPRIETORS ABOVE HIM.

In *Mayor of Baltimore v. Warren Manufacturing Co.* (59 Md. 96), decided 1882, it was said:

What nature and extent of pollution of the stream will call for the active interference of the court is not in all cases easy to define. It is not every impurity imparted to the water, however small in degree, that will be the subject of an injunction. All running streams are, to a certain extent, polluted; and especially are they so when they flow through populous regions of country and the waters are utilized for mechanical and manufacturing purposes. The washings of the manured and cultivated fields and the natural drainage of the country of necessity bring many impurities to the stream, but these and the like sources of pollution can not ordinarily be restrained by the court. (*Wood v. Sutcliffe* (2 Sim. (N. S.) 163).) Therefore when we speak of the right of each riparian proprietor to have the water of a natural stream flow through his land in its natural purity those descriptive terms must be understood in a comparative sense, as no proprietor does receive, nor can he reasonably expect to receive, the water in a state of entire purity. But any use that materially fouls and adulterates the water, or the deposit or discharge therein of any filthy or noxious substance, that so far affects the water as to impair its value for the ordinary purposes of life will be deemed a violation of the rights of the lower riparian proprietor and for which he will be entitled to redress. * * *

And in *Honsee v. Hammond* (39 Barb. (N. Y.) 89), in sustaining the charge of the trial judge, the court said:

* * * He very properly refused to charge that the action could not be maintained for throwing tan bark into the river when it was done without intent to injure and in the usual manner in which the water was used in the tanneries. The judge had previously charged that both parties had a right to the use of the water for all legitimate purposes; but that one riparian proprietor had no right so to use the water as to fill or clog it with foreign and noxious matter which would materially interfere with the use of the water below, and to the damage and injury of the owner, and thereby greatly impair or destroy the use of the property. The principle laid down was clearly correct. * * *

The Supreme Court of Tennessee has held in *Cox v. Howell* (108 Tenn. 133; 58 L. R. A. 487; 65 S. W. 868) as follows:

* * * The general proposition of law that the owner of land across or over which a stream of water flows has a right to have it flow over the land in its natural channel, undiminished in quantity and unimpaired in quality, except so far as is inseparable from a reasonable use of the water from the stream for the ordinary and useful purposes of life by those above him on the stream, is well established by an almost unbroken current of authority.

Cited with approval in *H. B. Bowling Coal Co. v. Ruffner* (117 Tenn. 180), decided February 19, 1907. And the New York Court of Appeals has said, in *Strobel v. Kerr Salt Co.* (164 N. Y. 303), decided 1900:

* * * A riparian owner is entitled to a reasonable use of the water flowing by his premises in a natural stream, as an incident to his ownership of the soil, and to have it transmitted to him without sensible alteration in quality or unreasonable diminution in quantity. While he does not own the running water, he has the right to a reasonable use of it as it passes by his land. As all other owners upon the same stream have the same right, the right of no one is absolute, but is qualified by the right of the others to have the stream substantially preserved in its natural size, flow and purity, and to protection against material diversion or pollution. This is the common right of all, which must not be interfered with by any. The use by each must, therefore, be consistent with the rights of the others, and the maxim of *sic utere tuo* observed by all. The rule of the ancient common law is still in force; *aqua currit et debet currere, ut currere solebat*.

And the same court said, in the later case of *City of New York v. Blum* (208 N. Y. 237), decided April 22, 1913:

The general rules governing the rights of riparian owners are well established and the bare statement of them will suffice. Each is entitled to a reasonable use of the water flowing by his premises and each is entitled to have the stream preserved in its natural size, flow, and purity (citing *Strobel v. Kerr Salt Co.*, *supra*).

And in *Worthen and Aldrich v. White Spring Paper Co.* (74 N. J. Eq. 647), decided June 10, 1908, it was said:

The defendant is, of course, entitled to a reasonable use of the water of the stream, but that use must be lawful and must be exercised with due regard to the lawful rights of lower proprietors and especially is this true as to the charge of pollution.

The courts may be said to be substantially unanimous in recognizing the right of each riparian proprietor to make a reasonable use of the stream.

In the application of the principle, the decisions have been somewhat conflicting. There are, however, a number of general principles that appear to have the sanction of substantially all the courts where the common law obtains.

COURTS HAVE GENERALLY FAVORED THOSE USES OF A STREAM THAT MAY BE CLASSED AS NATURAL, SUCH AS DOMESTIC USE, WATERING OF CATTLE, ETC., AS DISTINGUISHED FROM ARTIFICIAL USES LIKE MANUFACTURING.

In the case of *People v. Hulbert* (131 Mich. 156), the respondent was a riparian proprietor on the banks of Gogneau Lake in the waters of which he was in the habit of swimming. The city of Battle Creek purchased a piece of land with a 200-foot frontage on the lake and installed a pumping station to supply the city with water. It then caused the arrest of the respondent for swimming in the lake on the theory that it tended to pollute the water supply and was a criminal nuisance. The Michigan Supreme Court said:

The first question calling for consideration is, Was the act of respondent unlawful? It is a matter of common knowledge that in this State the riparian owners whose lands border upon lakes, and through whose lands streams run, are in the habit of using the streams and lakes by allowing their domestic animals to drink therein, and by drawing therefrom what water may be needed for domestic purposes; and themselves and their families resort to the water of the streams and lakes for the purpose of bathing at suitable seasons of the year. It is also known that, as a rule, the supply of cooking and drinking water is obtained from springs or wells. Will the fact that a lower riparian proprietor decides to use the water of the stream or lake for drinking and cooking purposes make a reasonable use of the water by the upper riparian owners for the purposes of watering cattle and bathing purposes unlawful because to do so has a tendency to make the water less desirable for drinking and cooking purposes? Can the upper proprietors be deprived of such reasonable and ordinary use when the lower proprietor is a city having a large population by invoking the police power, and without compensation? It will readily be seen these are very important questions. The diligence of able counsel has failed to call our attention to a case on all fours with the one at bar, but the principles involved are not new.

It is very clear that the lower proprietor has no superior right to the upper one, and may not say to him that, because the lower proprietor wants to use the water for drinking purposes only, the upper proprietor may not use the water for any other purpose. Each proprietor has an equal right to the use of the stream for the ordinary purposes of the house and farm, even though such use may in some degree lessen the volume of the stream or affect the purity of the water.

So in *Helfrich v. Catonsville Water Co.* (74 Md. 269; 13 L. R. A. 169), where a water company, chartered for the purpose of supplying pure water to the inhabitants of Catonsville and the adjacent

portion of Baltimore County, acquired a tract of land, constructed works, etc., upon a clear natural stream of water which flowed through the land of the appellant Helfrich about 140 rods above the land of the water company. Helfrich owned six cows, which he pastured in a lot which adjoined the stream. The water company filed a bill praying for an injunction restraining Helfrich from permitting his cows to enter or stand in the stream, alleging that the water was greatly polluted and befouled by the cattle, etc. The trial court granted an injunction, but upon appeal the Court of Appeals of Maryland reversed the trial court, on the ground that the use which Helfrich was making of his property in pasturing his cattle on the stream was a reasonable use in view of the character of the land and its adaptability to pasturing purposes, etc., and that the water company had no right to complain of incidental injury resulting therefrom. Said the court:

So far as we can see from the record, there was nothing unreasonable or unusual in the way in which the cattle were pastured in this lot. * * * He seems to have used his pasture as all men, time out of mind, have done in like cases. We are not unmindful of the vast number of cases where persons have been enjoined from committing nuisances in running streams and from depositing or permitting to be deposited in them noxious, deleterious, or unwholesome matter, and from any unlawful or unreasonable thing which impairs the legitimate use of the water by riparian owners. Nor have we overlooked the numerous cases where it has been held that certain kinds of manufacturing establishments have infringed the vested rights of such owners. Our opinion is placed on the distinct ground that Helfrich was using his pasture lot in a reasonable manner, and that he had a right so to use it. His right was not in any way abridged by the incorporation of the water company and the establishment of its works.

So in the case of *McEvoy v. Taylor* (56 Wash. 357; 105 Pac. 851), decided December 16, 1909, where the defendant was the owner of a small tract of land on the outskirts of Walla Walla on which was a small pond 20 by 40 feet from which a small stream flowed across the plaintiff's property. Plaintiff sued for an injunction prohibiting the defendant from allowing his horses, cattle, geese, etc., from entering into and polluting the waters. This injunction was granted by the lower court. Defendant appealed. Although it appeared that the water was somewhat polluted as the result of the use made of the water by the defendant, the supreme court said:

It can not be gathered from all the evidence of respondents but that the use of the spring and pond by appellants was a natural use. They had the right to use the spring and pond to water their cattle or for their geese to swim upon, and the pollution of the water, being a natural incident to a proper and reasonable use, can not be restrained nor prevented.

We therefore hold that appellant's use of the spring and pond was a natural and reasonable use, and that it can not be enjoined.

And reversed the decision of the court below.

And in *Beach v. Sterling Iron & Zinc Co.* (9 Dick. (N. J.) 65, affirmed in 10 Dick. 824), the court held:

By the common law of the land every owner may cultivate his land without regard to its effects to his neighbor, while such is not the law as to mining.

BUT ALTHOUGH A USE MAY BE CLASSED AS A NATURAL ONE, IF IT BE EXERCISED IMMODERATELY OR EXCESSIVELY, IT BECOMES UNREASONABLE AND ILLEGAL.

Thus in *Helfrich v. Catoonsville Water Co.* (supra), while recognizing the defendant's right to make a reasonable use of the stream, the court said:

* * * If Helfrich had wantonly or recklessly befouled the water of the stream, or had harassed the water company or injured its business by an immoderate and excessive exercise of his acknowledged rights, he would justly have been responsible for his conduct.

And in *People v. Hulbert* (supra), while upholding the right of the defendant as a riparian proprietor to bathe in the waters of the lake, the court said:

In what we have said we do not mean to intimate that an upper proprietor may convert his property into a summer resort, and invite large numbers of people to his premises for the purposes of bathing, and give them the right possessed only by the riparian owner and his family. We are undertaking to decide only the case which is presented here.

And in *City of New York v. Blum* (supra), the New York Court of Appeals upheld the plaintiff's right to an injunction upon the distinct ground that the manner and extent of defendant's use of his pond in allowing large number of water fowls to swim thereon, etc., was unreasonable at common law. And in *Barton v. Union Cattle Co.* (28 Nebr. 35; 44 N. W. 454; 7 L. R. A. 457) the defendant company was an upper proprietor on the Papillion Creek and maintained on its premises some 3,500 cattle. The drainage from the premises greatly polluted the water of the stream to the injury of the plaintiff. The supreme court, in granting an injunction, held that while the business of the defendant "might be legitimately carried on without damage to a lower owner upon a stream like the Missouri or Platte," yet it could not "be carried on without infringing upon the rights of the lower landowner upon a stream of the size of the Papillion."

ORDINARILY THE DRAINAGE OF SURFACE WATER CAN NOT BE MADE THE GROUND OF COMPLAINT EVEN THOUGH IT CAUSES INJURY TO A LOWER RIPARIAN PROPRIETOR.

The case of *Waffle v. N. Y. Central Ry. Co.* (53 N. Y. 11) was one which arose from the fact that the defendant had drained a swamp in such a manner that the water ran into the stream more rapidly than it otherwise would have run, and that as a result the flow of the stream in which it ran was less even. This injured the defendant, who owned a mill 2 miles down the stream, because at

times it made the water too high and at other times too low. The court held that the defendant had the right to thus drain his land and there was no liability. And in *McCormick v. Horan* (81 N. Y. 86) it was said:

"THE OWNER OF LANDS DRAINED BY A WATERCOURSE, MAY CHANGE AND CONTROL THE NATURAL FLOW OF THE SURFACE WATER THEREON, AND BY DITCHES OR OTHERWISE ACCELERATE THE FLOW, OR INCREASE THE VOLUME OF WATER WHICH REACHES THE STREAM, AND IF HE DOES THIS IN THE REASONABLE USE OF HIS OWN PREMISES, HE EXERCISES ONLY A LEGAL RIGHT, AND INCURS NO LIABILITY TO A LOWER PROPRIETOR."

And in *Jackman v. Arlington Mills Co.* (137 Mass. 277) it was held that an owner—

has a right to collect the surface water and the natural drainage of his land into an artificial stream and discharge it into a natural watercourse which is the natural outlet of the waters thus collected, even although by this artificial arrangement the flow of the waters is accelerated and the volume at times is increased, provided that this is done in the reasonable use of his own land, and that the discharge is not beyond the natural capacity of the watercourse and the land of a riparian owner is not thereby overflowed and materially injured.

Sowers v. Schiff (15 La. Annual 30) was a case in which the plaintiffs were upper proprietors and owners of a plantation who sued the defendants for an injunction against damming back the water from the plaintiff's land and causing it to back up to the injury of the plaintiff. There was no question but what there was a natural servitude, but the defendants attempted to justify their act of damming back the water by claiming that the plaintiffs had accelerated the flow and discharged water in excess of the amount which their servitude authorized. The facts are not very fully stated, but the opinion indicates that there was no very serious injury to the defendants. The court said:

Upon the whole we are of the opinion that the aggravation of the servitude was authorized, as it had for its object the interest of agriculture and did not tend to redeem swamp lands nor turn the natural course of water in another direction.

BUT ONE DRAINING THE SURFACE WATER INTO A NATURAL STREAM WILL NOT BE PERMITTED TO CAUSE THE CAPACITY OF THE STREAM TO BE EXCEEDED SO AS TO OVERFLOW TO THE INJURY OF A LOWER RIPARIAN PROPRIETOR.

Jackman v. Arlington Mills Co., 137 Mass. 277.

Kauffman v. Griesner, 26 Pa. St. 407.

There is a North Carolina case which it is believed goes much further than any other court has gone in permitting the acceleration of the run-off of surface water by an upper riparian owner.

In the case of *Mizell v. McGowan* (120 N. Car. 134), decided 1897, the defendant was the owner of swamp land which he desired to redeem and the plaintiff was a lower riparian proprietor on a stream

into which the swamp drained. The defendant dug canals in this swamp which had the effect of so accelerating the run-off to the stream, Broad Creek, that the same was caused to flow upon the land of the plaintiff, who brought suit for damages. The following from the opinion of the court is sufficient to indicate the holding:

The defendant asked the court to charge the jury that if they find from the evidence that Broad Creek and Moyes Run are natural water courses and that the waters of the upper swamps naturally flow therein, and were susceptible of drainage for agricultural purposes, then the defendant had a right to make such canals in these swamps as were necessary to drain them of the water naturally falling thereon, although in so doing the flow of water in Moyes Run was thereby increased and accelerated, and the flow of water was increased on the plaintiff's land. This prayer embraces the substance of all the prayers. His honor modified the prayer by saying "provided he does not thereby damage said land." Defendant excepted.

We think (said the supreme court) his honor should have given the defendant's prayer in substance without the proviso. * * *

The upper owner can not divert and throw water on his neighbor, nor the latter back water on the other with impunity. *Sic utere tuo ut alienum non laedas.* This rule, however, can not be enforced in its strict letter, without impeding rightful progress and without hindering industrial enterprise. Minor individual interest must sometimes yield to the paramount good. Otherwise the benefits of discovery and progress in all the enterprises of life would be withheld from activity in life's affairs. "The rough outline of natural right or liberty must submit to the chisel of the mason that it may enter symmetrically into the social structure." Under this principle the defendants are permitted not to divert, but to drain their lands, having due regard to their neighbor, provided they do not do more than concentrate the water and cause it to flow more rapidly and in greater volume down the natural streams through or by the lands of the plaintiff. This license must be conceded with caution and prudence.

The doctrine that "minor individual interests must yield to the paramount good," and that the rights of riparian proprietors must sometimes surrender to other riparian proprietors having larger and more important interests, will be met with again in connection with the rights of manufacturers, mining concerns, etc., and therefore need not be discussed further here. Suffice it to say that this is the only case that has been found in which the rights of a riparian proprietor engaged in farming have been made to yield to those of another riparian proprietor desiring to redeem swamp lands for the purpose of farming.

WHILE THE RIPARIAN PROPRIETOR MAY ACCELERATE THE RUN-OFF OF SURFACE WATER INTO A NATURAL STREAM HE WILL NOT BE PERMITTED TO DIVERT IT FROM ITS NATURAL COURSE.

Thus in *Wolcott v. Wilmington & Weldon Ry. Co.* (124 N. C. 214) it was said:

It is now well settled that neither a corporation nor an individual can divert water from its natural course so as to damage others. They may increase and accelerate but not divert. (*Jenkins v. Ry.*, 110 U. S. 438; *Parker v. Ry.*, 123 U. S. 171.)

And in *N. N. & M. V. Co. v. Wilson, etc.* (16 Ky. Law Repts. 262) it was held that—

* * * While one may lawfully drain his land into a natural watercourse, even though by so doing a lower proprietor is injured by the increased flow, yet that such a right does not authorize one, by dumping debris, rock, and other obstacles in the channel, to change the course of the stream to the injury of a lower owner.

DISCHARGING WASTE FROM A MANUFACTURING PLANT OR MINE INTO A STREAM IS NOT A NATURAL USE OF THE STREAM AND IF DONE TO THE MATERIAL INJURY OF THE LOWER RIPARIAN PROPRIETOR, CREATES A LIABILITY FOR DAMAGES.

In *Packwood et ux. v. Mendota Coal and Coke Co. et al.* (84 Wash. 47, 146 Pac. 163), decided in 1915, an action was brought by plaintiffs, who were owners of a farm through which ran a natural stream of water and who sued and recovered \$1,000 against the defendants for polluting the waters of the stream. Defendants were engaged in mining coal. In preparing it for the market the coal was washed by water taken from the creek, and after flowing through the washing machinery the water "flowed back into the stream, carrying with it quantities of fine coal, rendering, as the evidence tends to show, the water flowing in the stream through respondents' farm unfit for domestic and farm purposes, and especially unfit for watering stock, which is its principal value to respondents."

The supreme court said:

If the acts of the company resulted in the pollution of the water of the stream flowing through respondents' farm to a substantial degree, and rendered it materially less suitable for domestic and farm purposes, and they thereby suffered substantial damages, appellants became liable therefor, though this might not be the limit of the company's right to the use of the water as riparian owner, were it putting the water to ordinary domestic and farm uses, under the law as announced by us in *McEvoy v. Taylor* (56 Wash. 357; 26 L. R. A. (N. S.) 2221), where we held in effect that the use of the water of a stream by a riparian owner for ordinary farm and domestic purposes, such as allowing his horses, cattle, and fowl free access thereto, was a reasonable use, and did not render him liable in damages to a lower riparian owner entitled to the use of the water for farm and domestic purposes, though such use rendered the water materially less pure to such lower riparian owner's substantial damage.

The use of the water of a stream for industrial or manufacturing purposes by a riparian owner, by which it is polluted with a foreign substance, we think is quite another matter, when it comes to testing such owner's right as against a lower riparian owner entitled to the use of the water for farm and domestic purposes. In such cases at least, and possibly some others, we believe the law to be that the right to the reasonable use of water by a riparian owner for manufacturing or industrial purposes, resulting in the pollution of the water with foreign substances, is limited to the extent that such use must not materially pollute the water to the substantial damage of the lower riparian owner. This, we think, is the fair import of these instructions.

And after quoting at length from *Snow v. Parsons* (28 Vt. 459; 67 Am. Dec. 723), *Merrifield v. Lombard* (13 Allen (Mass.) 16, 90 Am. Dec. 172), *Day v. Louisville Coal and Coke Co.* (60 W. Va. 27, 10 L. R. A. (N. S.) 167), and *Tenn. Coal, Iron and R. Co. v. Hamilton* (100 Ala. 252, 261, 46 Am. St. Rep. 48), the court said:

We believe it safe, however, to say that in the absence of rights resting upon prescription or custom, neither of which is here involved, there can be no more practical or just rule of liability resting upon riparian owners using the water of a stream for industrial or manufacturing purposes, and thereby polluting the water with foreign substances, than that damages caused by such use and pollution of the water renders such user liable to a lower riparian owner entitled to use of the water for domestic and farm purposes, whenever such damage is of a substantial nature. This of necessity results in the question being one for the jury, except in cases where the evidence is such as to leave no room for honest difference of opinion as to the substantial nature of the damage.

It will be noted that the Supreme Court of Washington was at some pains to make clear the fact that the use that it was protecting by the rule which it laid down was a natural one, and whether the same rigid rule could be invoked for the protection of a lower proprietor engaged in an industrial or manufacturing enterprise may be doubtful.

But in Massachusetts substantially the same rule was applied where the question arose between manufacturers. In the case of *Parker v. American Woolen Mills Co.* (195 Mass. 591; 81 N. E. 168; 10 L. R. A. (N. S.) 584), decided May 28, 1907, the defendant company was enjoined against the discharge of waste into Beaver Brook, the plaintiff being an owner of a paper mill below the defendant on that stream. The court, after citing numerous cases in Massachusetts and other States and a number of text writers, said:

* * * The right to use the stream to carry away mere waste matter in a reasonable manner and to a reasonable extent is not so to be extended as to include a right to discharge into the stream noxious and deleterious matter to such an extent as sensibly and materially to foul the water and destroy its purity and fitness to be used by others.

It is true, of course, that there is in any large body of water a purifying principle which will, either by ordinary sedimentary deposit or by chemical change, obviate the evil effects which otherwise would arise from the deposit therein of some limited amount of noxious matter. Accordingly, it is not for every small deposit of such matter that the law will give a remedy. This was the case in *Brookline v. Mackintosh* (133 Mass. 215). There doubtless must be a material and sensible deterioration of the quality of the water. * * *

and entered a decree enjoining the defendant—

from emptying or discharging into the brook upon its premises, above the plaintiff's premises, any acids, soaps, compounds of soap, or of iron, chemicals, scourings, dyestuffs, sewage, or any objectionable substances whatever, in quantities that noticeably or appreciably affect the purity of the waters when they reach the plaintiff's premises, or render them materially less fit for drink-

ing, domestic, or other uses at that point than they are when they enter the defendant's premises. * * *

The court observed that it would be impossible for it to make the terms of the injunction more express. It was said:

Defendant must at its peril see that it does not overpass this limit.

In the later case of *MacNamara v. Taft* (196 Mass. 597; 83 N. E. 310; 13 L. R. A. (N. S.) 1044), decided January 1, 1908, the facts were thus stated by the court.

The defendant owns a mill containing four sets of machinery for the manufacture of sashnet cloth. It is upon a small stream which in its natural state is 8 to 12 feet wide and from 3 to 6 feet deep. The mill is run in part by water power and in part by steam power. The plaintiff owns a farm containing about 50 acres of land nearly a mile below, through which the stream flows on its way to French River. This bill is brought to obtain an injunction against the pollution of the water by the discharge of noxious matter into it. The evidence shows that the defendant used daily at this mill a large quantity of oil, put upon the material before it is spun, and 180 pounds of soap, 165 pounds of soda ash, 45 pounds of soda salts, 200 pounds of extract of logwood, and 43 pounds of blue vitriol in fulling and dyeing his cloth. After these chemicals are put into the fulling mill and taken up by the cloth, the cloth is placed in washers and washed. A large part of the logwood and vitriol, and substantially all of the other chemicals, are washed out and discharged into the stream. The effect of this discharge is to make the water dark in color and to give it an oily odor and taste such as to prevent the plaintiff's cows from drinking it, as they are pastured on the banks of the stream below.

The limit upon the right of the upper proprietor to pollute the stream is discussed by the court in the following language:

* * * Ordinarily, the question whether the use of a stream by an upper riparian owner is reasonable is a question of fact. The reason why such a question is open, in many cases, is that certain uses of a stream which are universally recognized as lawful may diminish the quantity of the water or affect its quality to some extent. The watering of cattle may permanently abstract from the stream so much as they drink. The use of land for the pasturage of cattle may roll the water as they pass through it if the banks and bed of the stream are muddy, or cause the dropping of excrement into it, which will slightly affect its quality when it reaches the land of the next owner, just across the boundary line. The cultivation of land may cause earth to be washed into the stream. Such uses, carefully regulated, are not unreasonable, and the right of the owner below is subject to the exercise of these rights by the upper proprietor. But the questions of fact which arise in determining whether a use is reasonable are limited by certain rules of law. One is that a permanent diversion of a substantial portion of the water, to the detriment of an owner below, can not be found to be reasonable, although it may be convenient and profitable for the diverter. It is an invasion of a legal right. In like manner the discharge of a noxious substance into the stream in such material quantity as to affect the purity of the water when it reaches the land of a lower riparian owner, if it interferes with his use of the water, is an invasion of his right of property and, as matter of law, is unreasonable. But in a use of a stream, of a kind which is generally recognized among the people and in the courts as legal, a slight impairment of the quality of the water, which is necessary and incident

to the use when properly and carefully regulated, is not unreasonable. These we think to be the rules that are deducible from the cases in Massachusetts and in other States.

In *Red River Roller Mills v. Wright* (30 Minn. 249), decided 1883, the plaintiff was the proprietor of a flour mill on Red River and sued the defendant, the proprietor of a saw and shingle mill above him on the stream, to enjoin it from discharging sawdust, bark, and other refuse into the stream, which refuse was carried down by the current and retarded the plaintiff in the operation of his mill. There was no question but that the only means of disposing of the sawdust and other refuse from the defendant's mill as it was constructed was by permitting it to fall into the stream over which the mill was built. On the other hand, it clearly appears that the plaintiff had sustained substantial injury from this refuse matter.

The trial court found that the defendant was only making a reasonable use of the stream, and refused an injunction. But the supreme court held that when it is shown that an upper riparian owner's use of a stream interferes with the reasonable use of the stream by a lower proprietor to the injury of the latter, it places the burden of proof on the upper owner to justify his use as a reasonable one—

* * * and the greater the injury is to the lower owner (said the court), the greater necessity for such use must the upper owner show in order to establish its reasonableness. The reasonableness of such use must determine the right, and this must depend in a great degree upon the extent of the detriment to the riparian proprietors below.

While the court conceded that the defendant had shown—

* * * that owing to the construction of buildings adjacent to said mill, and the formation of the land thereabout, there is no other available method of disposing of this refuse without rendering the mill, as it now stands and is constructed, useless as such.

But the court held the defendant should have gone one step further and shown that there was some necessity for locating his mill where it was located and that it was properly constructed.

* * * In the location and construction of his mill (said the court), defendant was bound to anticipate and have regard for any reasonable use to which others might or could put the stream. For anything that appears in the evidence, this mill could have been so constructed as to render the casting of this refuse into the water wholly unnecessary.

In this case the plaintiffs constructed their flour mill some two years after the defendant's mill was constructed, "but this fact does not give the defendant any extra or special rights in the matter," said the supreme court.

In a very important case in Maine in which a number of able counsel appeared on each side and in which an opinion of considerable length was written, the complainant was a manufacturer of

cotton goods, employing over a thousand persons, and the defendants were a number of manufacturers who discharged sawdust, edgings, shavings, refuse wood, and other débris into the stream and stopped the wheel and retarded the manufacturing operations of the plaintiff. The question of the reasonableness of the use of the stream by the defendants was discussed by the court as follows:

* * * Although they did not strenuously controvert the fact of the great damage to the complainants, they claim that what they do in thus disposing of their waste is but a reasonable use of this river. * * *

* * * Any diversion or obstruction which substantially and materially diminishes the quantity of water so that it does not flow as it has been accustomed to, or which defiles and corrupts it so as to essentially impair its purity, thereby preventing the use of it for any of the reasonable and proper purposes to which it is usually applied, is an infringement of the rights of other owners of and through which the stream flows, and creates a nuisance for which those thereby injured are entitled to a remedy. (*Merrifield v. Lombard*, 13 Allen 17.)

It is laid down by the courts that the general principles governing the use of running streams in respect to the diversion, obstruction, or detention of water must also govern in respect to the amount of waste resulting from the process of manufacture. The reasonable use in such cases depends upon the circumstances of each particular case. The law does not lay down any fixed rule for determining what is a reasonable use of the water of a stream by a riparian proprietor. For domestic, agricultural, and manufacturing purposes, to which every riparian owner is entitled, there may be, consistently with that right, some diminution, retardation, or acceleration of the natural flow. So in regard to the use of the stream for manufacturing purposes, there must necessarily be more or less waste which it would be impossible to exclude from it and which by no ordinary care or prudence could be prevented from falling into the stream. The reasonableness of such use of the water must determine the right, and this must be governed by the extent of detriment received by the riparian proprietors below. (See *Hays v. Waldron*, 44 N. H. 580.)

And it was held that the use made of the stream by the defendants was not reasonable and should be enjoined. (*Lockwood Co. v. Lawrence*, 77 Me. 297, decided Apr. 22, 1885.)

In *Worthen & Aldrich v. White Spring Paper Co.* (74 N. J. Eq. 647), decided June 10, 1908, defendant was engaged in the manufacture of paper from pure cotton and linen rags and its mill was located on the Yantacaw River about a quarter of a mile up the stream from the works of the complainants, who were engaged in the business of bleaching, dyeing, and finishing cotton cloths. Plaintiffs had a large bleacher and had expended in buildings and machinery approximately \$500,000 and employed about 600 men. They required large quantities of pure water, and the plant was located because of the availability of the water supply from the stream. Complainant commenced to operate its mill shortly after its construction in 1895, and about 10 years later the defendant began to operate the paper mill. Almost immediately complainant experienced difficulty in its work, and an examination disclosed that this arose from small

particles of cotton fiber which adhered to the fabrics and made it necessary to subject them to new and distinct operations in order to remove them. This suit was brought for an injunction, and the principal question in the case was whether or not the defendant was making a reasonable use of the stream in discharging the waste material into it. The court said:

Any appreciable discharge, into a natural water course, of any noisome substance is within the prohibition of the law. In the case at bar the pollution consisted of placing in the stream large quantities of waste cotton fiber, the particles of which varied in length from one-thirty-second to three-eighths of an inch and at times the deposit was in such quantities as to be actually visible to the eye in the discoloration of the water of the canal and river and in the deposit of quantities of the same material on the ground forming the banks and beds of these waterways. And at other times it was deposited in such large quantities as to be visible in the tailrace and in the stream in floating flocks or lumps, and at other times it was deposited in large quantities upon the screens and other apparatus and devices which are placed by the complainant in the canal for the purpose of straining the water before it went to the complainant's bleachery. There is no question on the evidence of the deleterious character of the polluting material, nor of the fact that it appeared in the waterways above described in such quantities as to seriously damage the complainant in the enjoyment of its property, nor of the further fact that it appeared in the washing machine in the works of the complainant in damaging quantities, and at times to such extent as to compel the complainant to shut down portions of its works. This was not and is not either a reasonable or a lawful use of the water of the river, and at the time the bill was filed, in my opinion, the facts and circumstances warranted the complaint which the complainant made in the court.

A very important case is that of the Indianapolis Water Co. *v.* American Strawboard Co. (53 Fed. Rep. 970), decided 1893, where the plaintiff was a water company owning a system of water works constructed under statutory authority for supplying water, for domestic uses and for the extinguishment of fires, to the inhabitants of Indianapolis. The demurrer having raised the question of the relative rights of the parties as riparian proprietors and the reasonableness of the defendant's use of the stream, that question was discussed by Judge Baker as follows:

* * * Every riparian proprietor has the right to insist that the stream shall flow to his lands in the usual quantity and quality, and at its natural place and height. He owes the duty of permitting it to flow off his land to the lower riparian proprietor in its accustomed quantity, quality, place, and level. The proprietor has no property in the flowing water, which is not the subject of riparian ownership, but he may use it for any purpose to which it can be beneficially applied, without material injury to the rights of others. Any diversion or obstruction of the water which substantially diminishes its volume, or the depositing of any substances in the stream which corrupt or pollute the water to such a degree as essentially to impair its purity, and prevent its use for any reasonable and proper purpose to which running water is usually applied, is an infringement of the right of other owners of land through which the stream flows.

And the court pointed out in detail the allegations of the bill as to the nature and extent of the pollution and held that—

* * * the bill shows the wrongful corruption of pure and wholesome water, so that it has become offensive to sight and smell, and deleterious in use for ordinary domestic purposes. It clearly discloses an actionable wrong, and overruled the demurrer.

AND THE FACT THAT A MANUFACTURER IS ENGAGED IN AN IMPORTANT INDUSTRY, THE OPERATION OF WHICH BENEFITS THE PUBLIC, WILL NOT BE HELD TO EXCUSE HIM FOR POLLUTING THE STREAM TO THE INJURY OF THE LOWER PROPRIETOR.

Thus in *Indianapolis Water Co. v. American Strawboard Co.* (57 Fed. Rep. 1000), decided 1893, the court said:

It is urged that the defendant is prosecuting a business useful in its character, beneficial to the public, and furnishing employment to a large number of men, and that it is conducted with skill and prudence, and with the most approved machinery, and, if damage results, it arises from no fault of the defendant, and that in such cases the ancient rigor of the law has been modified in furtherance of industrial progress and development. This contention finds no support, either in principle or authority. It is rudimentary that no man can be deprived of life, liberty, or property but by due process of law, nor can private property be taken, even for public use, without just compensation first having been made or received; and under no form of government having regard for man's inalienable rights can one be permitted to deprive another of his property without his consent and without compensation, on the plea that the injury to the one would be small, and the advantage to the other, or even to the public, would be great. This principle has its sanction in the consciousness and right reason of every man, and is asserted by the concurrent judgments of all courts which administer an enlightened system of jurisprudence.

In *Silver Spring Bleaching and Dyeing Co. v. The Wanskuck Co.* (13 R. I. 611), decided February 11, 1882, in which an injunction was granted against a woolen goods manufacturer who was polluting a stream by the means of dyestuff to the injury of a cotton goods manufacturer on the stream below, the court in speaking of the rights of a riparian owner said:

* * * he has a right to have the water pass his land in its natural pure state. Pollution, to be the subject of a suit, must of course be appreciable. And we feel bound to reaffirm the decision heretofore made in the case of *Richmond Mfg. Co. v. Atlantic De Laine Co.* (10 R. I. 106) and the principles there set forth.

But the respondent contends that while this might be very good law in former days, when we were simply an agricultural people, and the water was only used for drinking, domestic washing, and the watering of horses and cattle, there has been a complete change of circumstances; that we are largely interested in manufactures, and the wealth of the State depends mainly on their prosperity; and that the lesser use should give way to the more valuable use. * * *

The right of the riparian owner, be he farmer or mill owner, to have the water pass his land in its natural state and to a certain use of it as it passes, not, however, injuring it for the use of others, is just as much his property

as the land itself. This court can not alter the law. Nor can the legislature take this right from him any more than it can take his land. If needed for public use, the State can take this right upon making compensation. But they can not take it, or, which is in this case the same thing, the use of it, from one man and give it to another for private purposes, even on the latter's paying for it. That may be a matter of private agreement, but the State can interfere only to protect the rights of all parties, not to take them away.

And in *Middlestadt v. Waupaca Starch and Potato Co.* (93 Wis. 1), decided March 27, 1896, where it was urged that the public importance of the defendant's industry as a useful manufactory was a justification for the pollution of the stream by the discharge of waste into the stream to the injury of a lower owner, who was a farmer, inasmuch as he had but a few head of stock and owned land for only 100 rods along the river and the evidence did not show that he ever used the water for household purposes. The court said that—

* * * Any distance from the source of pollution, nor public convenience, nor difficulty in voiding the trouble can neither justify nor excuse the wrong.

The same principle was upheld in *Weston Paper Co. v. Pope* (155 Ind. 394; 56 L. R. A. 899), decided June 22, 1900, where the defendant paper company contended its business was a lawful one, and that it was absolutely necessary for it to discharge its waste into the stream, even though it injured the plaintiff, a farmer and lower proprietor, who utilized the stream for domestic purposes and watering stock.

To the same effect is the case of *Lockwood Co. v. Lawrence* (77 Me. 297), decided April 22, 1885, where the court said:

* * * However great these industries or however important to either may be the result of this suit, the rights of the parties to the use of the water in that river are established by well-settled principles.

And in *Holsman v. Boiling Springs Bleaching Co.* (14 N. J. Eq. 335), decided 1862, it was said:

* * * Much evidence has been offered (I do not say improperly), on the one hand, to show the great value of the complainants' property and the variety of purposes—necessary, convenient, and ornamental—to which the water of the stream is applied; and, on the other, the extent and value of the defendants' manufacturing operations and the benefit thereby conferred upon the community in which they are located. These are considerations which naturally do, and which perhaps in some cases may legitimately, influence a court of equity in the exercise of its discretion. But these considerations can exercise no influence in the determination of the present case. The legitimate ground for the allowance of the injunction is not so much the intrinsic value of the property sought to be protected as its essential character and its importance to the complainants. The injunction is allowed, not upon the ground that the complainants' premises are occupied by a family of wealth and taste; that the water is used for supplying fish ponds, and fountains, and conservatories, and other purposes of ornament, taste, and luxury, but because the wrong complained of deprives the complainants of one of the essential elements of

life, because it seriously interferes with the daily health, comfort, and enjoyment of the family, and because the injury, in its essential character, is one for which no damages which a jury may give can compensate.

And in this view the injunction should freely issue to protect the humblest cottager who complains against the pollution of the spring at his cottage door, from which his family derives their daily supply of water for domestic use.

To the same effect is the case of *Penn American Plate Glass Co. v. Schwinn* (177 Ind. 645; 98 N. E. 715), decided May 28, 1912.

In *Hill v. Standard Mining Co.* (12 Idaho, 223), decided April 12, 1906, defendants were sued for damages for discharging débris and poisonous substances, lead and arsenic, etc., into the stream, to the injury of the plaintiffs, who were ranch owners. The defendants strenuously urged that the importance to the community of the mining and milling business was such that the doctrine of the *Sanderson* case should control, but in overruling the demurrer of the defendants the majority opinion denied the force of the contention and said:

The law does not measure the rights of litigants by the amount involved, nor the manner in which it may affect others not parties to the litigation.

In a concurring opinion Justice Ailshie held that the pollution of the stream by poisonous substances, etc., was justified by the nature and necessities of the mining business, but that it did not justify the defendants "in wrongfully dumping and depositing rock, earth, sand, and waste material into the stream and filling up the natural channel of the stream, and thereby causing the same to wash over and upon the lands of the plaintiff." The dissenting opinion follows the reasoning of the *Sanderson* case in permitting the development of natural resources with due care without liability to the lower owner injured thereby.

IT HAS BEEN HELD THAT EVEN WHERE A LOWER PROPRIETOR CAN, AT COMPARATIVELY SMALL EXPENSE, PROTECT HIMSELF AGAINST THE INJURY CAUSED BY AN UPPER PROPRIETOR ENGAGED IN AN IMPORTANT BUSINESS, HE IS NOT BOUND TO DO SO.

Thus in *Richmond Manufacturing Co. v. Atlantic De Laine Co.* (10 R. I. 106), where defendants urged the large importance of their business and the fact that the plaintiff could at small expense prevent the injury by installing a filter, the court said:

And it is no defense to say that the complainants could have filtered the water at no great expense. The complainants are under no obligation to do this, and the respondents have no right to put them to the expense of doing it.

And in *Stevenson v. Coal Co.* (200 Pa. 316), which was a suit for damages resulting from refuse matter emptied into the stream by mines to the detriment of the lower proprietor, the court said:

* * * As to the sixth assignment, appellants offered evidence to prove that plaintiff could procure pure water from another source. This testimony the court rejected. We said in the former opinion in this case, that plaintiff "had the right to use this water as it naturally flowed over his own property."

and that his right to decline the use of any other water was just as absolute as to enjoy his own unpolluted. We can not see how such evidence could be used in mitigation of damages for infringement of an undisputed right. No wrongdoer can trespass on the right of a citizen and mitigate his wrong by saying, "You can secure as valuable a right elsewhere."

The same case had been before the court before and the court had said:

* * * There was no error in rejecting the offer to prove that the Nescopack Water Supply Co. would agree to supply fresh water to the plaintiff at the rate of \$15 per annum, in an amount sufficient to wash the wool in his factory. He had the right to use the water of Nescopack Creek as it naturally flowed over his own property, and private parties polluting it can not urge, in mitigation of the damages they cause, that they offered to give him a substitute for it. The right to arbitrarily decline the use of any other water proffered by the defendants was as absolute as the right to use his own unpolluted water, and the tenth assignment is overruled. (201 Pa. 123.)

And in *Brown v. Gold Coin Mining Co.* (48 Oreg. 277, 86 Pac. 361), decided July 24, 1906, where plaintiff sued for an injunction to prevent the defendant from emptying pulverized ore into the stream flowing through plaintiff's premises and where it was contended that the plaintiff might have obtained water for his stock and for domestic purposes from other sources, the court granted the injunction and perpetually restrained the defendant "from the further operation of its mill until it has made suitable provision to prevent injury to plaintiff's irrigating ditches, and to the water used by him from the creeks for household and for stock purposes," saying as to the contention of the defendant above indicated:

* * * The plaintiff, being a riparian proprietor on Rith Creek, was entitled to have that stream flow through his premises undiminished in quantity, except as to the reasonable use thereof by other like proprietors, and undiminished in quality, and because he might possibly secure water for his family and for his stock at other places on his land than the streams mentioned, does not impose on him the duty of resorting thereto to supply his needs, in order that a quartz mill may be operated * * *

In that case, however, the plaintiff's predecessor in interest had made a prior appropriation of the water.

In *Elliott et al. v. Ferguson* (37 Tex. Civ. App. 40), where plaintiffs sued for an injunction against the locating of a cemetery at a point where it was claimed that drainage would flow from it, to the injury of their wells, and where such an injunction was granted, defendant, on appeal, argued that the trial court had erred in refusing an instruction to the jury to find which of their wells would be injured by the proposed cemetery. It was the contention that only two of the plaintiffs would have been injured as to their wells, and that these two could have been supplied with wooden cisterns at a cost of \$30 each, and that therefore the estab-

lishment of the cemetery should have been permitted. The court said:

We can not consent to this contention. The plaintiffs have the right to the unrestricted use of the water furnished by their wells and springs, and the law ought not to compel them to abandon or restrict such use and adopt another and different water supply in order that the defendants may use their property for cemetery purposes.

And in *Penn American Plate Glass Co. v. Schwinn* (177 Ind. 615; 98 N. E. 715), decided May 28, 1912, the court said:

Nor can the riparian owner below be required to protect himself.

In the case of *Snow v. Parsons* (28 Vt. 459), decided 1856, the court had before it the question of whether testimony as to the custom of discharging tan bark into the stream was admissible in a suit for damages against the defendant, the proprietor of a tannery, brought by the plaintiff, a lower riparian proprietor owning a sawmill on a branch of the Deerfield River. The plaintiff had recovered damages in the lower court, but the supreme court reversed the lower court upon the ground that the testimony regarding custom should have been admitted. Defendants had shown that there had been no inconvenience caused to plaintiff until his installation of a new type of wheel; that the tan bark had not interfered with the wheel that he had formerly used; and it appeared that the wheel in use "might have been altered without impairing its usefulness, and at a small expense, so that the tan bark would not impede or affect its operations."

The Vermont Supreme Court, in holding that the reasonableness of the use was the test of liability, said:

This must be determined upon general principles applicable to the entire business of tanning, and the importance of discharging its waste materials in this mode, and the probable inconvenience of those below. And if in this view they regard the use as an unlawful one, then surely the defendants are liable to all damage sustained by the plaintiff, whether he might have used a wheel less liable to injury or not.

But if the use is fairly to be regarded as a lawful one, then probably the plaintiffs should have conformed their machinery to the altered circumstances of the stream. And if the defendants' use of the stream is a lawful and allowable one it will make no difference that the plaintiff's mill was first erected if it had not been in operation a sufficient length of time to acquire any prescriptive right to use the water in an extraordinary manner. And as the plaintiff's present wheel was put into his mill after the defendants' tannery was in operation and his other wheel would not have been unfavorably affected by bark nothing by way of prescription or license or prior occupancy can probably be claimed.

Later the same court had the question of the duty of a lower proprietor to protect himself more directly before it. In *Jacobs v. Allard* (42 Vt. 303) the complainants, who owned a starch factory,

sought to enjoin the defendant, a sawmill proprietor on the stream, above complainants, from discharging sawdust, shavings, and waste from his shingle mill and from placing the sawdust on the bank so that it washed into the stream. The effect of this discharge into the water was claimed to render it impure and unfit for making starch, to clog the flume and penstocks of the complainants, and to prevent the proper operation of the starch factory. It was alleged that this was done with an intent to injure the complainants. The court failed to find any evidence of wrongful intent on the part of the defendant and said:

In the first place the evidence makes a rather strong impression on our minds that much of the trouble which the orators claim, and give evidence to show, that they experience in the condition of the water as it comes to their works is attributable to the manner in which they have constructed and adjusted a new dam in reference to their works and to the lack of proper fenders and strainers to protect against impurities that may get into the stream from the mills and works above the orators. It would seem that by proper modes and means which they could, without unreasonable pains and expense, have adopted and put in use, the troubles complained of while the defendant was using his shingle mill and letting the sawdust and waste from it go into the stream.

And the court denied injunctive relief and dismissed the bill with costs. There is nothing in the opinion to indicate what the expense to the defendant of installing the fenders and strainers would have been, except the general expression that it could have been done "without unreasonable pains and expense."

In the case of *Barton v. Union Cattle Co.* (28 Nebr. 350, 44 N. W. 454, 7 L. R. A. 467) it was contended that the plaintiff, a farmer on Papillon Creek, ought not to have injunctive relief against the defendant, a cattle company, which ran a sewer into the stream and so polluted it as to render it unfit for agricultural purposes, etc., upon the ground that the plaintiff, by an initial expenditure of a few hundred dollars and by small annual expenditures, might provide means of watering this stock without resorting to Papillon Creek, the watering of stock being the principal purpose to which the stream was devoted by the plaintiff. The court denied that such an alternative furnished a sufficient reason for denying an injunction. The court discusses the case of *Jacobs v. Allard*, *supra*, and, in distinguishing it, said:

The distinction between the above case and the case at bar in respect to the remedy suggested is that in the one case it is a prevention of the effect of the pollution, and in the other it contemplates the enduring of the effect of the pollution of the stream, but suggests the creation of an artificial watercourse to supply plaintiff's land, and contemplates the abandonment of the stream, which is the subject of the litigation. The difference, as it seems to me, is radical in principle, and I do not think that the comparatively small cost at which plaintiffs

might be able to supply water for their cattle from an independent source can be considered in connection with their right to have the stream remain uncontaminated in the manner shown by the pleadings and bill of exceptions.

A further distinction, which the learned justice might have made and which may be of some significance, is the fact that in the Vermont case both the plaintiff and the defendant were utilizing the stream for industrial purposes, and no natural or domestic or agricultural use of a lower riparian proprietor was involved, whereas in the Nebraska case the plaintiff was using the stream for natural purposes, and although the defendant was likewise utilizing it for such purposes in a certain sense, yet its use was so extensive as to have lost the protection of the rule in favor of natural uses.

But the Supreme Court of Ohio has denied injunctive relief to a plaintiff where the injury sustained could be obviated, although only by the utilization of a water supply other than the stream polluted by the defendants.

In the case of *Salem Iron Co. v. Hyland* (74 Ohio, 160), decided April 3, 1906, the plaintiff was the owner of a tract of 48 acres of land, and for some 35 years had operated thereon a blast furnace for the manufacture of pig iron. There were also dwelling houses occupied by employees of the plaintiff and their families, and a portion of the land was used for pasturage. Cherry Fork of Beaver Creek ran through the land, and in its natural state the water was practically free from impurities and was suitable for the generation of steam, the plaintiff utilizing some 200,000 gallons of it daily for that purpose. The defendants had discovered a valuable bed of petroleum near the source of Cherry Fork, and above the plaintiff's premises, and were operating it "in the usual way and without negligence by pumping the oil and the salt water, with which it is always commingled in the Ohio field, into tanks, permitting the oil to rise to the surface and drawing the salt water from beneath it, the water finding its way by gravity to the stream. No other mode of operating for petroleum is known." While the bill alleged that the operations of the defendants not only rendered the water unsuitable for use in the boilers but also in times of overflow injured the pastures on the plaintiff's land, the opinion of the supreme court does not mention any damage to the pastures, so that it must have found that there was no evidence to sustain that allegation of the bill. As to the impairment of water for use in the boilers, the court said:

The extent to which the water of the stream is charged with salt when it reaches the property of the plaintiff varies with the stage of the water in the stream, but it is at all ordinary stages sufficient to increase the foaming of the water in the boilers when heated, to raise its boiling point, to increase the demand for fuel for the generation of steam and to diminish perceptibly the effi-

ciency of the furnace. It is practicable for the plaintiff to obtain water for the furnace at other and convenient sources at a moderate and ascertainable expense, and the addition of a small amount of oil to the water of the stream after it receives the water of the oil wells of the defendants would materially diminish the foaming and lower its boiling point.

It is impossible for the defendants to develop the mineral resources of the land without doing all the things with which they are charged.

The opinion does not indicate what the "other and convenient sources" of supply of water available to the plaintiff were.

The court said:

The single question for our determination is whether, upon such a state of facts, a court of equity should perpetually enjoin the prosecution of the enterprise of the defendants in view of the injury which it unavoidably inflicts upon the plaintiff.

And held that the pollution of the stream by the defendant was not a taking of property, but that at the most it was only a nuisance and that courts of equity should not enjoin a nuisance where the remedy at law is adequate, and said:

This is not an action for damages. The defendants are conducting a lawful business with care. They are conducting it at the only place where it can be conducted. Such injury as is done to the plaintiff is unavoidable. No injury to the health of the public or the employees of the plaintiff results. If the conduct of the defendants is without right, and a more appropriate rule of damages should not be suggested in an action at law, the recovery of a sum of money sufficient to pay the expense of obtaining water from another source would fully indemnify the plaintiff and relieve it of further injury without additional litigation. Cases which take no account of considerations, such as these, are not in harmony with the beneficent purposes for which the system of equity was established.

There is no such thing as an equitable nuisance. If the plaintiff has no cause of action at law in the present case, it can have none in equity, and the jurisdiction of the courts of equity must be determined by the usual test respecting the adequacy of the legal remedy. That nuisances are frequently enjoined results from the fact that they are frequently, if not usually, of such a nature as to present one of the recognized grounds of equitable jurisdiction—that is, that the injury is irreparable by the processes of the law or that a multiplicity of suits would be required at law to obtain redress.

The case does not require us to consider whether the plaintiff may recover at law or whether in a case otherwise within the grounds of this form of relief an injunction should be denied because less injury would result to the plaintiff from denying than to the defendant from allowing it.

It will be noted that the facts upon which the opinion of the court rested did not include any question of the rights of the lower proprietor utilizing the stream for natural purposes, the proof apparently having failed in regard to the damage to the pasturage. It would seem that the reasoning of the court, by which its conclusion is reached, is that the legal remedy is complete and adequate in that it is open to the plaintiff to sue and recover the amount necessary for the installation of the system for obtaining water from another source of supply, would not apply to a case where the riparian owner

actually utilized a stream for agricultural purposes, such as the watering of cattle, etc.; in other words, the holding is not necessarily opposed to that of *Barton v. Union Cattle Co.*, *supra*.

The case is, however, irreconcilable with the holding in *Parker v. American Woolen Company*, and other cases, to the effect that a right will be protected by injunction, although no present use of the stream is being interfered with. Obviously the reasoning upon which the Ohio decision rests takes no account of the possible uses to which the stream might be devoted and it would seem to be hardly possible in any case to determine whether or not an alternative source of supply would be available which would fulfill all of the possible uses to which the stream might in its pure state have been devoted.

One is forced to the conclusion that the necessities of the defendants in the Ohio case had great weight with the court and that in its desire to do justice in the particular case, a conclusion was reached which may prove an annoying precedent for future cases.

THE DOCTRINE AS TO MINING USES ANNOUNCED IN THE SANDERSON CASE, FOLLOWED ONLY IN PENNSYLVANIA AND INDIANA, AND EXPRESSLY REFUDIATED ELSEWHERE.

While the holdings are substantially unanimous to the effect that manufacturing concerns causing material pollution are not making a reasonable and lawful use of the stream, a distinction is made by some courts as to utilization of the stream by mining concerns and the like. This doctrine had its origin in the case of *Pennsylvania Coal Co. v. Sanderson* (113 Pa. 126; 57 Am. Reps. 445). In that case the plaintiff was a lower proprietor who had purchased a piece of property on a clear, pure stream of running water after considerable investigation of the quality of the water of the stream and being largely influenced by its excellence. Plaintiff had built a home, constructed fish ponds, and installed an elaborate pumping system by which the water of the stream was utilized for domestic purposes. After this expense had been incurred the defendant company, engaged in the business of mining coal, caused the water from its mines to be pumped out and to flow into the stream. The water thus brought into the stream was of such character and quantity as to seriously pollute it. It killed the fish in the plaintiff's pond, rendered the water useless for domestic purposes, etc. The suit was brought for damages and an injunction. The case was twice decided in plaintiff's favor in the Supreme Court of Pennsylvania, but was brought before that court a third time, and four judges out of seven held that the plaintiff was entitled neither to damages nor an injunction. The decision of the court rested upon two grounds, neither of which had been generally regarded as sound by other courts: First, that in pumping water from its mines so as to cause

it to enter a stream running through its property the defendant was making a natural use of the stream; and, second, that the vast importance to the community and the State of the coal-mining industry required the plaintiff to give up her less important use of the stream for domestic purposes, and without compensation.

The holding of the Pennsylvania court on each of the above propositions has been severely criticized, and the case has not been followed, except in Indiana.

In *Beach v. Sterling Iron & Zinc Co.* (9 Dick. (N. J.) 65) the court says of the *Sanderson* case that—

It has not, so far as I know, been followed in any other court, certainly not in this State.

And in distinguishing mining from natural uses said:

The argument was advanced by the defendant that the use of the defendant's property for mining purposes is what was termed, unfortunately, I think, by Lord Cairns, in *Fletcher v. Rylands* (L. R. 3 H. L. 339, at pp. 338, 339) (1868), a natural user, and similar in that respect to plowing a field; and that if it be unlawful for defendant here to cast into the stream the muddy waters from its mine it is also unlawful for the farmer to plow his land and allow the muddy water which runs from it after a heavy rain to reach the river. But the very statement of the two cases shows the absence of analogy between them. In the first place, the water from the plowed field comes thereon by natural causes beyond the farmer's control and runs by gravity to the stream, while in the case of the mine the water is, as here, found and raised by artificial means from a level far below that of the river, and would never reach it but for the act of the miner; and, in the second place, by the common law of the land every owner may cultivate his land without regard to its effects upon his neighbor, while such is not the law as to mining. The Supreme Court of Ohio, in *Columbus Co. v. Taylor* (48 Ohio, 41, at p. 58), repudiates the notion that mining was a natural use of the land in the sense that farming is.

In *H. B. Bowling Coal Co. v. Ruffner* (117 Tenn. 180; 100 S. W. 116; 9 L. R. A. (N. S.) 923; 10 Ann. Cas. 581), decided February 19, 1907, in which the lower proprietor, a farmer, owning a sawmill and grist mill on a stream, was injured by a mining company which pumped water which found its way into the stream so as to pollute it, and where the coal company insisted that it was only making a natural use of the stream and was entitled to a natural and reasonable enjoyment of its property, and hence was not liable, the Tennessee Supreme Court said:

* * * While the principle invoked is well recognized, it has no application to the facts presented in the present record. The facts disclosed herein show that the mine water causing the pollution of the stream did not escape from the mine during the lawful progress of the work and find its level by the laws of gravitation in the stream so contaminated. But it affirmatively appears that the mine owner, in order to benefit himself, deliberately collected the mine water in pipes, and, conveying it through the mine and to a distance

of 75 feet beyond its mouth, emptied it into the stream or tributary flowing into the East Fork of Little Emory River, so that it is perfectly apparent that the injury sustained by the plaintiff below was not the inevitable consequence of a natural use and enjoyment of the defendant's property, but was the result of the artificial collection and disemboguing of poisonous waters into a stream where the plaintiff was enjoying his undoubted riparian rights.

The defendant company appears to have relied upon the authority of the Sanderson case; but the Tennessee Supreme Court, after remarking that that case had twice been decided the other way before the ultimate decision, said:

* * * In commenting on this case it is unnecessary to do more than quote the words of Lord Shand in *Young v. Bankier Distillery Co.* (1893) (A. C. 691, 700): "In that case undoubtedly the court held that the owners of a mine were entitled to pump up water from the lower strata of the mine and to send it into an adjoining stream, although the quantity of the water was thereby increased and its quality so affected as to render it totally unfit for domestic purposes by the lower riparian owners." The case had been twice previously before the court, and on both occasions the judgment was given against the mine owner. On the third occasion, which occurred in consequence of a third trial to assess the damages, the jury found a very large sum due to the lower owner; but the verdict was quashed and the whole case reconsidered with reference to the legal rights of the parties, and with the result I have stated. In a court of seven judges there were three who dissented from the judgment, including the chief justice of the State. This circumstance and the grounds of the judgment seem to me to be sufficient to deprive the case of any real weight. These grounds appear to me, from a perusal of the judgment, to be fairly stated in the headnote, as follows: "The use and enjoyment of a stream of pure water for domestic purposes by the lower riparian owners, who purchased their land, built their houses, and laid out their grounds before the opening of the coal mine, the acidulated waters from which rendered the stream entirely useless for domestic purposes, must ex necessitate give way to the interests of the community in order to permit of the development of the natural resources of the country and to make possible the prosecution of the lawful business of mining coal." I shall only add that while the enormous value of the mining interests in the district of Pennsylvania, from which the case came and which is fully explained in the judgment, might have formed a good reason for appealing to the legislature to pass a special measure to restrain any proceeding by interdict at the instance of surface proprietors and to confine them to a right to damages only for injury sustained, that value could, in my opinion, afford no good legal ground for allowing the proprietor of a mine so to work his mines for his own profit as to destroy or greatly injure his neighbor's estate by subjecting it, by means of artificial operations, to the burden of receiving water enlarged in quantity and destroyed in quality without payment of compensation or damages for the injury done. The case has no application to the present, because the decision was based on special circumstances as to the great relative value of the minerals as compared with the surface in the district, and because in any view the decision seems to me to have been making law rather than interpreting the law, so as to give effect to the sound, just, and well-recognized principles as to the common interest and rights of upper and lower proprietors in the running water of a stream.

And in *Strobel v. Kerr Salt Co.* (164 N. Y. 303), decided 1900, the Court of Appeals of New York said:

* * * Courts of the highest standing have refused to follow the *Sunderson* case (*Columbus, etc., Co. v. Tucker*, 58 Ohio St. 41; *Beach v. Sterling Iron & Zinc Co.*, 54 N. J. Eq. 65; *Young v. Bankier Dist. Co.*, L. R. App. Cas. 1893, 691); and its doctrine was finally limited by the court which announced it (*Robb v. Carnegie*, 145 Pa. St. 338). The court below, however, manifestly followed the Pennsylvania rule without limitation (*Mann v. Retsof Mining Co.*, 49 App. Div. 454, 459). We have never adopted that rule in this State and no public necessity exists therefor, even if it would ever warrant the courts in relaxing rules for the protection of property of small value in the interest of some business required to develop the resources of the State, and in which much capital had embarked, giving employment to a great number of people.

The holding was also condemned in *State of West Virginia v. Southern Coal & Transportation Co.* (71 W. Va. 470, 76 S. E. 970; 43 L. R. A. (N. S.) 401).

And in *Columbus & Hocking Coal & Iron Co. v. Tucker* (48 Ohio St. 12 L. R. A. 577), decided January 13, 1891, the court said:

We are admonished that the case is one of great practical importance.

And said:

We agree that the case is an important one, and, recognizing this, the court has given to it full and patient consideration.

It was strenuously urged in that case that the defendant, engaged in mining coal, ought to be excused from liability to the plaintiff, a lower proprietor upon whose land slack and refuse from the coal mine was deposited, because of the importance of the defendant's business to the community and the fact that it was developing a natural resource, etc. But the court said:

Nor is it of consequence that the operation of the company's mines tends to the development of the natural resources of the country. But few enterprises, the product of which is useful, fail to advance the general good. Along with many evils attending the working of this class of organizations, valuable services have been rendered to the public by them and many comforts and necessities are afforded the people by them which the capital of single individuals would be inadequate to produce. At the same time they are not, in the eye of the law, public enterprises, but, on the contrary, are organized and maintained wholly and entirely for private gain, and so soon as gain ceases to follow their operation, just so soon do the operations themselves cease.

* * * The further claim of the company that it had the right to make the deposits in the places complained of because it was necessary to the successful conduct of its own business to so place them, seems no less wanting in substance. The effect is to measure the rights of the plaintiff in his lands and in the waters of Monday Creek by the convenience or necessity of the company's business. An owner of land in Ohio is not subject to any such narrow and arbitrary rule.

In *Drake v. Lady Ensley Coal, Iron & R. Co.* (102 Ala. 501, 24 L. R. A. 64), plaintiff, a farmer, sued for damages for injuries resulting from the pollution of the stream flowing through his premises

and utilized by him for watering stock, etc., and at times for drinking purposes. The defendant was an upper proprietor who pumped large reservoirs of water from the stream, utilized it for washing its ore and returned it to the stream, thus causing the pollution complained of. The defendant contended that the injury was *damnum absque injuria* because of the importance of the industry in which it was engaged and that the plaintiff's right ought to be yielded to the larger and paramount good. The Sanderson case was relied upon, but the Alabama Supreme Court refused to recognize this contention and, in the opinion by Mr. Justice Coleman, said:

Under the provisions of the Constitution, private property can not be taken for public uses, or for corporations without just compensation being first made to the owner, except by his consent. The courts—and it was never intended to be otherwise understood—are not the "masons" to "chisel" away vested rights of property of private individuals, however humble and obscure the owner, for the benefit of the public or great corporations. It is the pride of this Republic that no man can be deprived of his property without due process of law, and the poorest citizen can find redress for an unlawful injury caused by his wealthy neighbor by appealing to the courts of his country.

But there has been, perhaps, some slight yielding to the doctrine in Alabama. In *Tennessee Coal, Iron & R. R. Co. v. Hamilton* (100 Ala. 252), decided 1893, plaintiff recovered damages against the defendant arising from the pollution of the stream caused by the washing of ore in water which was taken from the stream and then allowed to flow into it again. The case was sent back for a new trial largely on the ground that testimony was excluded which would have gone to show that others were washing ore in the same stream and that not all of the injury which the plaintiff sustained was caused by the defendant. The injury sustained by the plaintiff appears to have been quite serious and the court seems to have recognized that there was a right to recovery. Fish had been driven from the stream, sediment deposited in the stream which caused it to overflow its banks, and plaintiff had been required to take her cattle to another water supply for water and had suffered other inconveniences.

The court, while not indorsing the doctrine of the Sanderson case, quotes from an earlier decision of that case (86 Penn. St. 401) to the effect "that the exigencies of great industrial industries must be kept standing in view," and the Alabama court then says:

It is certainly true that owing to the wants, if not the necessities of the present age—of agriculture, of manufactures, of commerce, of invention, and of the arts and sciences—some changes must be tolerated in the channels in which water naturally flows and in its adaptation to beneficial uses. Reasonable diminution of its quantity in gratifying and meeting customary wants has always been permitted. So its temporary detention for manufacturing purposes, followed by its release in increased volume, is a necessary conse-

quence of its utilization as a propelling force. Nor must we shut our eyes to the tendency—the inevitable tendency of these and other uses in which water is an indispensable element to detract somewhat from its normal purity. The modifications of individual right must be submitted to in order that the greater good of the public be conserved and promoted. But there is a limit to this duty to yield, to this claim and right to expect and demand. The watercourse must not be diverted from its channel or so diminished in volume or so corrupted and polluted as practically to destroy or greatly impair its value to the lower riparian proprietor. Sic utere tuo in such conditions is enjoined by social obligation and by law. It is difficult, if not impossible, to declare a rule in language so clear and precise as that it can be applied with certainty to every case that may arise. (See *Miss. Mills Co. v. Smith*, 60 Miss. 299.)

And in *Williams v. Haile Gold Mining Co.* (85 S. C. 1, 66 S. E. 117), decided November 23, 1909, wherein an action brought by a farmer against a gold-mining company, who sued and recovered damages and obtained an injunction, the defendant company set up the importance to the community of its business and its justification to the pollution. The Supreme Court said:

* * * It has been too frequently held by this court to require further discussion that when the existence of a nuisance has been established by the verdict of a jury the party injured is entitled as a matter of right to an injunction to prevent its continuance. (*Threant v. Mining Co.*, 40 S. C. 95, 26 S. E. 970; *Mason v. Apache*, 81 S. C. 554, 62 S. E. 399, 871.) Whatever may be the doctrine in other States under the provisions of the constitution of this State that private property shall not be taken for private use without the consent of the owner, the court could not have considered, in deciding whether to grant or refuse the injunction, the question raised by the defendant as to the balance of convenience or of advantage or disadvantage to the plaintiff and defendant and the public at large for the defendant's use of the stream. That question would be pertinent only in an application addressed to the legislature to give such corporations the power of condemnation. (*Boyd v. Granite Co.*, 66 S. C. 433, 45 S. E. 10.)

And the doctrine of the Sanderson case would seem unsound upon principle no less than upon authority. Manifestly the tendency of the doctrine is to render riparian rights unstable and uncertain. For example, just what degree of importance must an industry attain before it can claim the right to pollute a stream to the injury of a lower proprietor? Again, how necessary must the pollution be to the success of the enterprise; that is to say, suppose that the pollution could be prevented, but only by preventive measures involving additional expenditure? How little or how much effort with such preventive measures will the court require before permitting the property rights of lower proprietors to be destroyed? Again, are the rights of all lower proprietors within the rule laid down or only such lower proprietors as make use of the stream for domestic purposes, and if lower proprietors who utilize the stream for industrial purposes are to be compelled to give way to any interest of

industries of larger importance how is the relative value of the two industries to the community to be weighed? By the number of men employed by each and the value of the output of each at the time suit is brought? Or by the estimated extent of their operation at some future time?

It would seem that the rights of an individual in utilizing the stream for domestic purposes would stand upon at least as high a ground as similar rights made use of for industrial purposes, and that if the right could be destroyed in one instance, it could in both.

These are some of the considerations. It would seem to indicate that the Supreme Court of Pennsylvania has assumed a large responsibility, and it is not strange that the courts of other States have refused to follow the decision.

The difficulties which a concrete case may present are well illustrated in the opinion of the Supreme Court in *Commonwealth v. McCormick* (172 Pa. 506), decided 1896. In this case, upon the relation of the Butler Water Co. the attorney general of the Commonwealth brought a proceeding against the defendant to prevent it from polluting the water of Connoquenessing Creek. The defendant was engaged in the production of oil above the source of supply of the water company on the stream and in its operation pumped to the surface a fluid composed of 2 per cent oil and 98 per cent water. The oil was allowed to rise to the surface and was separately conducted off. The water, which contained a large amount of salt, was poured out upon the ground and by gravity came into the streams leading to Connoquenessing Creek, which was the sole and only source which the Butler Water Co. had utilized for its water supply. The water had been pure and wholesome and fit for domestic use about nine months out of each year before the defendants commenced their works, but for the remainder of the year it had been unwholesome. The lower court refused an injunction and followed the *Sanderson* case in holding that in view of the importance of the defendant's business it ought not to be interfered with to the serious extent which would follow an injunction. The Supreme Court held that were it not for the public nature of the water company this decision of the lower court would have been correct, but pointed out that the water company was engaged in a public business and that the supply it furnished "affected the health and comfort of thousands of citizens." The case was sent back for a new trial, the court stating that additional findings of fact should be made before a correct conclusion could be reached. (The findings of fact were somewhat numerous and occupied several pages in the printed report.) The court said:

* * * Among other subjects to be examined and passed upon are these: What was the situation of the valley or basin of the Connoquenessing when the

water company appropriated the stream for the supply of Butler borough? Was it at that time a developed oil field or not? At what date did the pumping of salt water into the stream begin? What is the value of the daily or monthly output of oil by the defendants from their wells? What would be the approximate cost of conducting the salt water either by surface drain or by pipes to some point below the plaintiff's dam? Can the salt water be relieved of its salt by subsidence or filtration by the operator before turning it into the stream, and if so at what expense? Can the water of the stream be so cleansed by the company and at what expense? Can the plaintiff command a sufficient supply of water by going above the defendant's wells for it, and could they then obtain pure water? If so, what would be the probable cost of such a change in the plant of the water company?

When the case has thus been fully heard on its facts the questions we have suggested can be considered * * *

Clearly the doctrine of the Sanderson case places upon the Pennsylvania Supreme Court grave responsibilities.

In Alabama the Supreme Court refused an injunction against a mining company, which the court judicially noticed was engaged in the business of very great importance to the State and said that the defendant should be remitted to an action at law for such damages as he could show. There were, however, other elements in the case which the opinion indicates were somewhat persuasive to the conclusion reached. For instance the court does not appear to have been satisfied that there was any real material injury to the defendant. The court said:

The only asserted use made of the creek by appellee, prior to the erection of the "washers," was for fishing, bathing, and watering a few horses, cattle, and hogs. * * * It is not shown that, since these washers were erected, appellee has suffered any material injury or been deprived of the means of giving water to his horses, cattle, and hogs.

And it was also found that a town was discharging its drainage into the stream and the court apparently assumed that this could not have been prevented by an injunction, and the pollution caused by the drainage of the town being inevitable, the court seems to have doubted the efficacy of an injunction against the mining company. Probably, therefore, the decision can not be laid hold of as a reliable authority for the proposition that an injunction will be refused out of deference to the importance of the industry causing the pollution. It would seem upon principle that such a doctrine would be but slightly less dangerous than that of the Sanderson case, for clearly the real effect of such a holding is to give the power of eminent domain to one upon whom the legislative authority has not seen fit to confer that power.

The right of eminent domain is derived from legislative authority. The courts generally have recognized the rights in a stream as property rights. It would seem to follow logically that such rights ought not to be permitted to be taken away except in case of the clearest

public interest recognized by the legislative authority. It will not do to say that the right is preserved to the lower owner through his right to recover damages. Damages are not always ascertainable with exactness, and even if they were, the proposition would still involve a forced sale of a property right which the owner might not choose to sell. Indeed the difficulty of estimating the money value of the right to a natural flow of a stream is one of the reasons why injunctive relief against a continuing pollution is recognized by the courts. The difficulty of assessing damages is always present and argues most strongly against relegating the injured owner to an action in damages.

The Supreme Court of Ohio, nevertheless, appears to have taken the position that where natural resources are being developed an injunction against pollution may be refused if the injury does not amount to an appropriation of the lower proprietor's property although the court strenuously opposes the doctrine of the *Sanderson* case and refuses to deny to the lower owner a right to recover his actual damages. In *Straight v. Hover* (79 Ohio St. 263), at page 278 it was said:

* * * where the invasion of the rights of the lower proprietor does not amount to an appropriation of his property, but merely constitutes a nuisance, an injunction will not be allowed to prevent the development of the resources of the lands of the upper owner, but that an action will lie for the recovery of such substantial damages as the lower proprietor may sustain by reason of such operations. With that position we are content since it seems to regard all the principles which the rights of the parties require us to recognize.

It is believed, however, that most of the cases in which an injunction has been denied were cases in which there was present an element of laches or estoppel. In the case of the *City of New York et al. v. Samuel Pine, et al.* (185 U. S. 93, 46 Lawyers Ed. 820), the city of New York erected a dam on the Byram River for the purpose of obtaining water to supply the city of New York. The dam interfered with the flow of the water in the lower part of the stream in the State of Connecticut to the alleged injury of defendants in error.

The suit was brought in the circuit court for the southern district of New York, and an injunction was granted precluding the city from diverting the water as planned. The case was affirmed by the circuit court of appeals by a divided court and brought to the Supreme Court by certiorari. The Supreme Court reversed the case, sent it back to the circuit court "with instructions to set aside its decree, and to enter one providing for an ascertainment in the way courts of equity are accustomed to proceed of the damages, if any, which the complainants will suffer by the construction of the dam and appropriation of the water and for which the defendant is legally responsible; a proposition upon which we express no opinion,

and fixing a time within which the defendant will be required to pay such sum, and that upon the failure to make such payment an injunction will be issued prayed for, and on the other hand, that upon payment a decree will be entered in favor of the defendant. If the complainants shall prefer to have their damages assessed by a jury, leave may be given to dismiss the bill without prejudicing the action at law." But Mr. Justice Brewer, who wrote the opinion, expressly disclaims an intention to hold that an injunction would not have been granted on the complainants proceeding promptly. The finding of the court was that the complainants had been in treaty with the city during a long period of time, and while the city was going ahead with the work and expending large sums of money; that it was contemplated by both parties that an agreement would be come to as to the amount of money which the city should pay the complainants for the privilege of diverting the water, and that inasmuch as complainants had not brought suit for an injunction until after the position of the city had thus been greatly altered, complainants had lost their right to injunctive relief. Said the court:

If the plaintiffs had intended to insist upon the strict legal rights (which for the purpose of this case, we assume they possessed) they should have commenced at once and before the city had gone to expense to restrain any work by it. It would be inequitable to permit them to carry on negotiations with a view to compensation until the city had gone to such great expense, and then, failing to agree upon compensation, fall back upon the alleged absolute right to prevent the work. If they had intended to rest upon such right and had commenced proceedings at once the city might have concluded to abandon the proposition undertaken and seek its water supplies in some other direction. If this injunction is permitted to stand the city must pay whatever the complainants see fit to demand, however extortionate that demand may be, or else abandon the work and lose the money it has expended. While we do not mean to intimate that the plaintiffs would make an extortionate demand we do hold the equity will not place them in a position where they can force one. * * * There is no thought of creating a new rule or of substituting a judicial opinion for an act of Congress.

And the court expressly held that the rule applied—

* * * could never be considered as inviting a party to do a wrong with the expectation of escaping every penalty save a pecuniary one.

In the case of *McCarthy et al. v. Bunker Hill & Sullivan Mining & Coal Co.* (147 Fed. Rep. 981), affirmed 164 Fed. Rep. 927, which was a suit to enjoin the defendants from discharging debris and poisonous and polluting matter from their mines and mills into the river to the injury of the complainants, who were owners of ranches on the Coeur d'Alene River, although the district judge in his opinion said, "it is not necessary to here review the testimony, but it is held insufficient to establish the alleged injury to complainant or to authorize the injunction asked," and also strongly intimated that the

complainants had not been prompt in making their complaint, thus bringing them within the rule of *New York City v. Pine* (185 N. S. 93), nevertheless the district judge mentioned, as additional ground for denying relief, the fact that the injury that would result to the defendants and to the public from the granting of an injunction would be so great as to overbalance the injury suffered by the complainants.

In the same case, upon appeal (164 Fed. Rep. 927), the Circuit Court of Appeals sustained the lower court in refusing the injunction. The opinion strongly indicates that the detriment to the defendants and to the community generally which would result from an injunction was given great weight by the court, although the opinion indicates that the court felt that there had been a failure, in large part at least, to substantiate the allegations of the bill, and, in quoting from *New York v. Pine* at some length, the court indicates that the question of laches may have had some weight.

While the case, therefore, can not be laid hold of as a definite authority for the proposition that injunctive relief will be denied because of a finding that the granting of an injunction will cause more damage to the defendants than the withholding of it will cost to the complainants, yet the language of the opinion very strongly indicates that such is the view of the court.

Perhaps the only clear-cut and definite refusal of granting an injunction upon that ground is found in the case of *Salem Iron Co. v. Hyland* (74 Ohio 160), which we have mentioned heretofore.

The Indiana Supreme Court has accepted the doctrine of the *Sanderson* case. In the case of *Barnard v. Sherley* (135 Ind. 547, 41 L. R. A. 737), decided September 22, 1897, the defendant in boring for gas struck mineral water which contained curative properties and installed an artificial well and built a sanitarium to utilize this water for bathing patients afflicted with all sorts of diseases. Water having been so used was caused to be drained by porous tile into a small natural stream of water which ran through the defendant's premises and through the lands of the plaintiff below. The plaintiff sued for damages and an injunction, alleging that the water thus discharged in the stream accumulated in great ponds upon her premises, becoming polluted and stagnant, causing great damage to her stock pasturing and feeding there, and endangering health of persons living on the land and drinking milk from the cows. She recovered damages to the amount of \$50 and an injunction preventing the defendant from discharging into the stream water which had been used in bathing persons afflicted with infectious ailments and from polluting the water so as to render it dangerous or injurious to living stock. Upon appeal the Indiana Supreme Court quoted at length from the

case of *Pennsylvania Coal Co. v. Sanderson* (113 Pa. 126), and largely upon the authority of that case reversed the decision of the lower court. Considerable weight and importance was given to the fact that the business of the defendant was of necessity located at the particular point where the water was found.

But even in Pennsylvania and Indiana the doctrine has been strictly limited to cases where the business must be carried on at the particular point and hence the benefit of the rule is not extended to manufacturing concerns. Thus in *Weston Paper Co. v. Pope* (155 Ind. 394, 56 L. R. A. 899), decided June 22, 1900, the defendant company was discharging refuse material into Brandywine Creek to the injury of the plaintiff, through whose farm the stream flowed and the defendant sought to justify its act upon the ground that although there was injury to the plaintiff yet the importance of the business in which the defendant was engaged and the fact that it was conducting its business in a skillful manner and without negligence or malice rendered the injury *damnum absque injuria*.

But the Supreme Court of Indiana overruled this contention and at the same time pointed out a clear distinction between the case before it and the *Sanderson* case and *Barnard v. Shirley* and other Indiana cases where the injury had been excused on account of the public importance of the defendant's use of the stream. Speaking of the latter cases the court said:

The principle underlying this class of cases is that the public has a general interest in the business carried on, as in being cured of diseases by mineral water baths, and in procuring coal for fuel, and in promoting city sanitation, and since the business is of a character that it can not be conducted at any other place than where nature has located it, or where public necessity requires it to be, individual rights must yield to the public good. The principle of these cases, however, is not applicable to the case before us. Here appellant is not engaged in the development of any natural resource, or in any usual or ordinary use of its own land. Its sole business is the manufacture of articles of commerce for its own profit. It is engaged in a business that may be carried on elsewhere less injuriously to the rights of others. It is engaged in bringing to its mill, not from its own premises, but from elsewhere, materials from which, by artificial means, it evolves putrescent matter, which it casts into Brandywine Creek, to the serious and substantial injury of lower proprietors. This appellant has no right to do. No court, so far as we have observed, has gone so far as to recognize the right of a manufacturer to establish his plant upon the banks of a nonnavigable stream and pollute its waters by a business wholly brought to the place, entirely disconnected with any use of the land itself, and which he may just as well conduct elsewhere, without responding in damages to those injured thereby, and to injunction if the injury done is substantial and continuing. (See *Indianapolis Water Co. v. American Strawboard Co.* 53 Fed. 970; *Robb v. Carnegie Bros.* 145 Pa. 324, 14 L. R. A. 329, 22 Atl. 649; *Lentz v. Carnegie Bros.* 145 Pa. 612, 23 Atl. 219; *Baltimore & P. R. Co. v. Fifth Baptist Church*, 108 U. S. 317, 27 L. ed. 739, 2 Sup. Ct. Rep. 719; *Barton v. Union Cattle Co.* 23 Nebr. 350, 7 L. R. A. 457, 44 N. W. 454; *Mississippi Mills Co. v. Smith*, 60 Miss. 299, 11 So. 26.

Nor did the court allow its decision to be influenced by the fact that the defendant had spent a large sum of money in its plant, etc. It was said:

* * * Before locating the plant the owners were bound to know that every riparian proprietor is entitled to have the water of the stream that washes his land come to it without obstruction, diversion, or corruption, subject only to the reasonable use of the water, by those similarly entitled, for such domestic purposes as are inseparable from and necessary for the free use of their land; and they were bound, also, to know the character of their proposed business, and to take notice of the size, course, and capacity of the stream, and to determine for themselves, and at their own peril, whether they should be able to conduct their business upon a stream of the size and character of Brandywine Creek without injury to their neighbors; and the magnitude of their investment and their freedom from malice furnish no reason why they should escape the consequences of their own folly. (*Pennoyer v. Allen*, 56 Wis. 502, 43 Am. Rep. 728, 14 N. W. 609; *Tiffin v. McCormack* 34 Ohio St. 638, 32 Am. Rep. 408; *Lafin & R. Powder Co. v. Tearney* 131 Ill. 322, 7 L. R. A. 262, 23 N. E. 389; *McAndrews v. Collierd* 42 N. J. L. 189, 36 Am. Rep. 508; *Heeg v. Licht* 80 N. Y. 579, 36 Am. Rep. 654; *Baltimore & P. R. Co. v. Fifth Baptist Church* 108 U. S. 317, 27 L. ed. 730, 2 Sup. Ct. Rep. 719.)

IT HAS BEEN HELD THAT EVIDENCE OF THE CUSTOM OF THE REGION IN WHICH THE STREAM IS LOCATED MAY BE RELEVANT AS BEARING UPON THE REASONABLENESS OF A GIVEN USE.

Thus in *Prentice v. Geiger* (74 N. Y. 341) it was said:

The question whether the owner of a sawmill may lawfully discharge the sawdust therefrom into the stream would depend upon the determination of the question of fact, whether such a use of the stream was reasonable, with reference to the rights of the lower proprietors. The jury, in determining the question, would be entitled to consider all the circumstances, such as the general character and condition of the stream, its volume and rapidity, the degree of injury which is occasioned, the custom and usage of the country, and the necessity of using the stream for this purpose.

And in *Red River Roller Mills v. Wright* (30 Minn. 249), decided 1883, which was a suit by a flour-mill owner to enjoin a proprietor of a saw-and-shingle mill from discharging sawdust, bark, and other refuse into a stream, an opinion was written in which the rights of riparian owners were discussed at some length. In the course of the opinion the court said:

Evidence of the uniform and general custom in like cases is competent, although, of course, not conclusive, upon the question whether a use is a reasonable one. Usage in such matters is some proof of what is considered a reasonable and proper use of that which is a common right, because it affords evidence of the tacit consent of all parties interested to the general convenience or necessity of such use. Of course, much would depend on the character and size of the stream and the uses to which it is adapted.

So in the case of *Snow v. Parsons* (28 Vt. 459), decided 1856, which was an action brought by a sawmill owner to enjoin the

proprietor of a tannery from discharging refuse bark into the stream. The court said:

And upon the question of the reasonableness of the defendant's use of the stream, it seems to me the uniform custom of the country for generations would be of some significance in determining its reasonableness. A uniform general custom upon this subject ought, upon general principles, to have a controlling force.

And in a Michigan case, Judge Cooley said:

We think the court erred also in declining to instruct the jury on defendant's request that in determining the question of reasonable use by the defendant they might consider, among other things, the general usage of the country in similar cases. As was said in *Gould v. Boston Duck Co.* (13 Gray, 452): "Usage is some proof of what is considered a reasonable and proper use of that which is a common right, because it affords evidence of the tacit consent of all parties interested in the general convenience of such use." And see *Thurber v. Martin* (2 Gray, 394), *Snow v. Parsons* (28 Vt. 459). Indeed, in most cases this proof is the most satisfactory and conclusive that could be adduced, being established by the parties concerned, who understand better than any others what is reasonable and convenient, and who would not be likely to acquiesce in anything which was not so. (*Dumont v. Kellogg*, 29 Mich. 420.)

And the New York Court of Appeals in *Strobel v. Kerr Salt Co.* (164 N. Y. 303), decided 1900, mentions "the usage of the country" as a circumstance to be considered in determining the reasonableness of a use made of the stream. So in *Salt Lake City v. Young* (45 Utah 349, 145 Pac. 1047) the court mentioned the case of *Helfrinch v. Catonsville Water Co.* (74 Md. 269) and says of it that it "seems to sustain their contention"; that is, the contention of respondent. But the court says:

* * * That case, in my judgment is, however, not so well considered as are the cases to which I have before referred. While the Maryland case may be applicable to the conditions prevailing in that State, yet it can not be said that it can be applied to the conditions present in this State where pure water means life. * * *

BUT OTHER COURTS HAVE HELD THAT EVIDENCE OF CUSTOM CAN NOT BE RELEVANT.

For example, in an exceedingly important case, wherein it was urged that the general custom of those engaged in coal mining justified the defendant's course in allowing refuse to be placed upon the banks of a stream so that it was carried into the stream and onto plaintiff's land, the Supreme Court of Ohio disposed of that defense in the following language:

* * * Equally immaterial, as we think, is the matter of custom among coal operators in the Hocking Valley and the surrounding mining districts near thereto of depositing slack and refuse on their own lands, when such custom is invoked to justify deposits so placed as to naturally allow them to wash down to the injury of lands lying below them. The rights of the plaintiff

to the uninterrupted use of his land, and the unimpaired use of the water of Monday Creek, being secured to him by the common law, how is it possible that a custom can deprive him of them? Why should a usage, the effect of which, if recognized, is to permit one man to take from another his property rights without compensation, be sanctioned? If it be assumed that the custom is a general one, then it is a part of the common law itself; and there would be presented an instance of two rules of law, equally binding, and yet wholly inconsistent the one with the other. If it be claimed that the custom is a particular one, then we have the anomaly of a landowner's common-law right in his land taken from him by a usage of a particular trade, established by strangers, which it is not pretended he has ever been cognizant of, much less assented to. To have affected the plaintiff the custom must have been shown to be reasonable and certain, known to him, or to have been so general and well established that knowledge would be presumed, peaceably acquiesced in, and not unjust, oppressive, or in conflict with an established rule of public policy. The alleged custom possessed scarcely one of these attributes. Even though it had been common throughout the State, it would not avail. A usage which is not according to law, though universal, can not be set up to control the law. (*Meyer v. Dresser*, 16 C. B. N. S. 646; *Stover v. Whitman*, 6 Blin. 416; *Inglebright v. Hammond*, 19 Ohio, 337.) Nor could the testimony offered avail the defendant on the question of negligence. Evidence of a particular custom is sometimes admitted to explain a contract, to ascertain the intention of the parties, or to show that the mode in which a contract has been performed is the one customarily followed by others engaged in the same calling or trade; but, as a general proposition, one charged with negligence will not be allowed to show that the act complained of was customary among those engaged in a similar occupation, or those placed under like circumstances, or owing similar duties. Such an offer is, in effect, to show as an excuse for defendant's negligence, a custom of others to be equally negligent. (*Deering, Neg.* par. 9; *Cleveland v. N. J. Steamboat Co.*, 5 Hun, 523; *Judd v. Fargo*, 107 Mass. 264; *Hinckley v. Barnstable*, 109 Mass. 126; *Miller v. Pendleton*, 8 Gray, 547; *Bailey v. N. H. & N. Co.*, 107 Mass. 463; *Littleton v. Richardson*, 32 N. H. 59; *Sewall's Falls Bridge Co. v. Flisk*, 23 N. H. 171; *Crocker v. Schureman*, 7 Mo. App. 358.)

That others engaged in like business have been accustomed to disregard the rights of their neighbors can furnish no justification to the defendant to do so. (*Columbus & Hocking Coal & Iron Co. v. Tucker*, 12 L. R. A. 577, 48 Ohio St. 42, decided Jan. 13, 1891.)

The Supreme Court of New Hampshire has taken a similar view. The following language was used:

* * * The remaining question touches the admission of evidence of usage, as bearing upon the reasonableness of discharging the sawdust and shavings into the stream. There are cases where the customs and usages of trade may be proved to aid in the construction of contracts and in defining the obligations arising out of such trade. (1 Greenl. Ev. sec. 292; 2 Stark. Ev. 453, 456, and notes; *Dunham v. Day*, 13 Johns, 40; *Cutter v. Powell*, 6 T. R. 320; *Noble v. Kenoway*, Doug. 510; *Dolby v. Hiest*, 1 B. & B. 224; *Renner v. Bank of Columbia*, 9 Wheat. 581.)

But whether such customs and usages may or may not be proved to bear upon the question of reasonableness in a case not growing out of any contract, upon which we give no opinion, we are satisfied that the court erred in admitting the proof of usage in the case before us, upon the ground that the jury

may be presumed to be already sufficiently informed as to what is a reasonable use of a watercourse, as they are supposed to be as to what shall constitute a reasonable state of repair of a highway (*Hubbard v. Concord*, 35 N. H. 69; *Patterson v. Colebrook*, 29 N. H. 94), or what shall be considered a reasonable use of it by the traveler.

Our opinion therefore is that this does not belong to that class of cases concerning navigation, trade, or manufactures, about which the jury may be supposed to require the aid arising from the proof of customs or usages, but we think that admission of such evidence would be to open an extensive field of inquiry in this and similar cases, upon the same principle, that would tend greatly to increase the expenses of litigation without affording in general any substantial aid to the jury.

The direction to the jury upon this point appears to have been based upon the highly respectable authority of *Stow v. Parsons* (28 Vt. 459), but upon a careful examination of the authorities we are unable to reconcile it with the course of our own courts upon that subject * * *. (*Hays v. Waldron*, 44 N. H. 580.)

In *Honsee v. Hammond* (39 Barb. (N. Y.) 89) the court upheld the refusal of the trial judge to charge the jury that the defendant could not be held liable for throwing tan bark into the river to the injury of the plaintiff if the discharge of the bark into the stream was done without intent to injury and in the usual way that obtains among tanneries.

IT HAS BEEN INTIMATED THAT NEW AND UNUSUAL USES WILL BE REGARDED MORE JEALOUSLY THAN COMMON AND CUSTOMARY ONES.

Courts have intimated that riparian proprietors making a new and unusual use of a stream will not be permitted the same latitude as those who are utilizing the stream for common and customary purposes. Thus, in *Strobel v. Kerr Salt Co.* (164 N. Y. 303), the court of appeals said:

When the diversion, or pollution, which is treated as a form of diversion, is caused by a new and extraordinary method of using the water, hitherto unknown in the State, and such method not only permanently diverts a large quantity of water from the stream, but also renders the rest so salt, at times, that cattle will not drink it unless forced to by necessity, fish are destroyed in great numbers, vegetation is killed and machinery rusted, such use as a matter of law is unreasonable and entitles the lower riparian owner to relief.

THE FACT THAT OTHERS THAN THE DEFENDANT OR EVEN THE PLAINTIFF HIMSELF ARE POLLUTING THE SAME STREAM WILL NOT EXCUSE THE DEFENDANT.

Woodyear v. Schaefer (57 Md. 1) was an action brought by the owner of a large farm on Gwynn's Falls against a defendant who owned a slaughterhouse on Gwynn's Run, a tributary of Gwynn's Falls. The suit was for an injunction against the pollution of the stream by the discharge of offal, blood, and other waste material from defendant's premises to the injury of the plaintiff.

It appeared that there were a number of other slaughterhouses discharging waste into the same stream and that in addition there were a number of breweries, soap factory, etc., and it was contended that inasmuch as the injunction against the defendant would not clear the stream but would still leave it seriously polluted, no injunction should be issued. The court said:

* * * So that the question to be decided is, Can a court of equity intervene to stop the appellee from committing the acts which constitute such an inconsiderable part of the wrong complained of, and which, if stopped, would leave the appellant still suffering from almost as great a grievance as he is now subject to? * * *

The extent to which the appellee has contributed to the nuisance may be slight and scarcely appreciable. Standing alone, it might well be that it would only, very slightly, if at all, prove a source of annoyance. And so it might be, as to each of the other numerous persons contributing to the nuisance. Each standing alone, might amount to little or nothing. But it is when all are united together, and contribute to a common result, that they become important as factors, in producing the mischief complained of. And it may only be after, from year to year, the number of contributors to the injury has greatly increased, that sufficient disturbance of the appellant's rights has been caused to justify a complaint.

One drop of poison in a person's cup may have no injurious effect. But when a dozen, or 20, or 50, each put in a drop, fatal results may follow. It would not do to say that neither was to be held responsible.

In that state of facts, as in the one presented by this case, each element of contributive injury is a part of one common whole, and to stop the mischief of the whole, each part in detail must be arrested and removed.

And in an earlier Maryland case, *Gladfelter v. Walker* (40 Md. 1), the court said:

* * * If the water of the stream was polluted by the defendant's throwing into it the drainings or refuse matter from his mill, the plaintiff was entitled to recover, unless the defendant had a prescriptive right so to foul the water.

The fact that other mill owners may have acquired such a prescriptive right was no bar to the action * * *.

In a well-considered case in New Jersey, which has been frequently cited, Vice Chancellor Pitney said:

Equally untenable is another position advanced by the defendant, viz, that the river was always more or less polluted by contributions from other mines and from the washing of plowed fields, public roads, and railroad embankments. Such insistments have been frequently made and always overruled. The question in such cases seems to be whether the stream has already become so far polluted by contributors who have acquired a right so to do by adverse use or otherwise as that the pollution presently opposed will not sensibly alter its condition. And even in such a case the courts have held that the party has the right to deal with each contributor in detail and to buy off such contributors as have acquired a right, and is not obliged to submit to fresh contributors. (Citing cases, *Beach v. Sterling*, etc.)

In *Jackman v. Arlington Mills Co.* (137 Mass. 277), it was said:

If the injury to the plaintiff resulting from the defendant's unlawful pollution of the waters of the brook can be specifically ascertained, it is no defense that the plaintiff in some degree has also polluted the brook * * *.

And in the case of *Parker v. American Woolen Co.* 195 Mass. 591, 81 N. E. 468, 10 L. R. A. (N. S.) 584, it was said:

* * * Nor is it material that other causes have contributed to the pollution of the stream. This does not excuse the defendant for its wrong doing * * *.

And in *Strobel v. Kerr Salt Co.* (164 N. Y. 303), decided 1900, the court said:

The fact that other salt manufacturers are doing the same thing as the defendant, instead of preventing relief, may require it. "Where there is a large number of persons mining on a small stream, if each should deteriorate the water a little, although the injury from the act of one might be small, the combined result of the acts of all might render the water utterly unfit for further use; and if each could successfully defend an action on the ground that his act alone did not materially affect the water, the prior appropriator might be deprived of its use, and at the same time be without a remedy." (*Hill v. Smith*, 32 Cal. 166; *Woodyear v. Schaefer*, 40 Am. Rep. 419; *Sherman v. Fall River Iron Works Co.*, 87 Mass. 213; *Mayor, etc. v. Warren Manufacturing Co.* 59 Md. 96; *Crossley v. Lightowler*, L. R. (3 Eq. Cas.), 279; 2 Ch. App. Cas. 478; *Pennington v. Brinsop Hall Coal Co.*, L. R. (5 Ch. Div.), 769, 772.)

In *Silver Spring Bleaching & Dyeing Co. v. The Wanskuck Co.* (13 R. I. 611), decided February 11, 1882, the court, after mentioning other defenses that were urged by the defendant, said:

* * * It also says that the complainant is itself a sinner, and pollutes the water below. That is a matter entirely between the complainant and the lower owners on the river, unless, indeed, it makes the river injurious to public health, or otherwise becomes an injury to the rights of the public, when the proper officers of the Government might interfere * * *.

In *Mayor of Baltimore v. Warren Manufacturing Co.* (59 Md. 96), decided 1882, the court, in granting an injunction, said:

* * * This source of pollution should be restrained; and even though there be other sources of pollution, or that many other persons are committing the same sort of nuisance, it forms no reason why this particular cause or source of pollution should not be restrained. (*Crossley v. Lightowler*, L. R. 3 Eq. Cas. 279; L. R. 2 Ch. App. 478).

So in *Indianapolis Water Co. v. American Strawboard Co.* (57 Fed. Rep. 1,000), decided 1893, Judge Baker said:

It is claimed that the people living along the river pollute the water by draining into it the filth and other refuse matter which accumulate on their premises. But it is no answer to a suit for creating and maintaining a nuisance that others, however many, are committing similar acts. Each one is liable to a separate suit, and may be restrained. (*Wood*, Nuis. par. 689; *Chipman v. Palmer*, 77 N. Y. 51.)

In *Donnell v. Greensboro* (164 N. C. 330, 80 S. E. 377) the defendant city urged in defense, among other things, that streams into which the sewage was discharged afforded the natural drainage for all that portion of the city from which sewage was discharged into them, and moreover that dyestuffs and other objectionable matter, contributing largely to the conditions complained thereof, were discharged into the stream by two mill settlements. The supreme court said:

* * * There is no objection open to defendants on their evidence that Buffalo Creek and Muddy Ford afford the natural drainage to all that portion of the city of Greensboro from which the sewage is emptied into said streams, nor by reason of the fact that there are, north of the city and outside of the corporation, two extensive mill settlements from which objectionable matter is also emptied into these streams. In the careful and comprehensive charge of the court these sources of contamination and any and all effect from them were excluded from consideration, and the jury were confined to the damages arising by reason of the operation of defendant's sewerage system and not otherwise.

And in the case of the *City of Richmond v. Test* (18 Ind. App. 482), the same position is taken as to a similar contention of the defendant city, although recovery is denied on the ground that the injury there results from the exercise by the city of a legitimate governmental function and that there can be no liability.

And to the same effect is the holding of the Supreme Court of Indiana in *West Muncie Strawboard Co. v. Slack* (164 Ind. 21), where it was said:

By the twelfth, thirteenth, and fourteenth instructions offered by the appellants it was, in effect, stated that if the streams in question were already impure and polluted before the appellants deposited their refuse matter therein, the appellee could not recover unless it was shown that the acts of the appellants rendered the waters of such streams more impure than they would otherwise have been. If so instructed, the jury might well have understood that the acts of the appellants were lawful, provided these watercourses were being contaminated by other parties also. Such is not the law. As stated in *Weston Paper Co. v. Pope* (supra), at page 402: "The fact that a watercourse is already contaminated from various causes does not entitle others to add thereto, nor preclude persons through whose land the water flows from obtaining relief by injunction against its further pollution." To the same effect see *Dennis v. State* (1883, 91 Ind. 201, 203); *Strobel v. Kerr Salt Co.* (1900, 164 N. Y. 303, 58 N. E. 142, 79 Am. St. 643, 51 L. R. A. 687).

BUT EVIDENCE THAT OTHERS THAN THE DEFENDANT HAVE CONTRIBUTED TO THE POLLUTION OF A STREAM IS ADMISSIBLE FOR THE PURPOSE OF SHOWING THAT NOT ALL THE DAMAGE SUSTAINED BY THE PLAINTIFF WAS CAUSED BY THE DEFENDANT.

It is so held in *Donnell v. Greensboro* (164 N. C. 330, 80 S. E. 377) and in *Tennessee Coal, Iron & R. R. Co. v. Hamilton* (100 Ala. 252), decided 1893.

WHERE A STREAM HAS BEEN POLLUTED FROM VARIOUS CAUSES FOR LONGER THAN A PRESCRIPTIVE PERIOD TO SUCH AN EXTENT THAT IT HAS BECOME A COMMON SEWER, THE RIGHT TO POLLUTE IT CAN NOT BE CHALLENGED.

In the case of the City of Cleveland *v.* Standard Bag, etc., Co. (72 Ohio St. 324, 3 A. & E. Ann. Cas.), decided in 1905, plaintiff was a proprietor of a paper works in the city of Cleveland on both sides of Kingsbury Run and sued the city for an injunction and damages for polluting that stream by the discharge of sewage from the city by means of sewers constructed in the years 1896, 1898, and 1899.

Before the trial of the case the plaintiff sold its premises, and hence was held not entitled to injunctive relief. The court of common pleas awarded damages, however, and upon appeal to the circuit court damages were also awarded. The city appealed to the supreme court, and it was there held that the plaintiff, having lost its right to equitable relief through the sale of its property, the only right of action that survived was the claim for damages, in the trial of which the city would have been entitled to a jury.

But the court further discussed the case upon its merits, and held that the plaintiff was not entitled to relief upon the merits.

It appeared that for upward of 21 years the stream had been so polluted that the plaintiff had not been able to utilize it for the purposes of its plant. That the inhabitants of the valley generally contributed to the polluted condition and that a number of large establishments discharged all sorts of sewage and refuse into the stream. These establishments included a slaughterhouse, numerous oil refineries, a paint factory, ice works, candle and axle grease works, lubricating-oil works, and soap works. It was also found that the plaintiff itself discharged sewage into the stream. There appears to have been no finding that the pollution amounted to a public nuisance. The supreme court said:

* * * It appears that for very many years the owners of property lying by Kingsbury Run for more than a mile above the company's premises have generally treated it as completely diverted from the primary uses of a flowing stream to those of a public open sewer. It is sufficient for present purposes that both the company and the city, the parties who will be concluded by the judgment in the present case, have so treated it continuously and uninterruptedly for more than 21 years prior to the bringing of this suit. To that diversion both parties have effectively contributed.

And the court held that an easement had been acquired by prescription which authorized this city to utilize the run for sewage purposes. The court further says:

* * * That during the period named the city has increased the amount of sewage discharged into the run is unimportant. For more than 21 years before the beginning of this action pollution from sewers of the city, the

works of the company, and the multitudinous other sources mentioned in the statement of the case has rendered the water wholly and admittedly unfit for any form of domestic use and devoted the run to sewerage purposes. The added sewers required by the growth of the city have been but a natural increase by it in the use of what was already a public sewer.

And the court further points out as its conclusion that Kingsbury Run is not to be regarded as a stream which is under the protection of the rules of law against pollution and—

may exempt the company from the ruinous consequences of indictment and punishment under section 6919 and the following sections of the Revised Statutes providing for the punishment of offenses against public health. * * *

And in *Parker v. American Woolen Co.* (195 Mass. 591, 81 N. E. 468, 10 L. R. A. (N. S.) 584), while granting an injunction against the defendant company, and holding that it was not "material that other causes have contributed to the pollution of the stream," yet said:

Nor is this a case in which the defendant is simply discharging noxious matter into an already polluted stream. It is expressly found by the master that the water when it reaches the defendant's premises "is good, clean, clear brook water, fit for any kind of manufacture or for domestic use."

And again in *MacNamara v. Taft* (196 Mass. 597, 83 N. E. 310, 13 L. R. A. (N. S.), 1044), decided January 1, 1908, the court, after citing the *American Woolen Co.*'s case, said:

* * * In that case, as in the present, the stream under consideration was substantially unpolluted by manufacturing or other impurities, and was nearly in its natural state, except for the acts of the defendant, and was not used under the authority of law for the discharge of sewage or other noxious substances, as some streams are which have been taken and appropriated to such a public use.

WHEN A STREAM IS POLLUTED BY AN UPPER RIPARIAN OWNER IN AN UNREASONABLE WAY OR TO AN UNREASONABLE EXTENT, ANY LOWER RIPARIAN PROPRIETOR WHO IS INJURED THEREBY, HAS A RIGHT OF ACTION AT COMMON LAW FOR THE ACTUAL DAMAGES SUSTAINED BY HIM.

In *Columbus & Hocking Coal & Iron Co. v. Tucker* (12 L. R. A. 577, 48 Ohio St. 42), it was said:

* * * Attention is also called to *Shearman & Redfield on Negligence*, paragraphs 733, 734. "It is a general principle that any person who without authority, diverts the whole or part of the water of a stream from its natural course, or interferes with its natural current, is responsible absolutely, and without any question of negligence, to anyone who is entitled to have the water flow in its natural state. Any use of the land near a stream, or of the water of a stream itself, which renders the water unwholesome, offensive, or unfit for the purposes for which it is used, is unlawful; and any riparian owner who is damaged by such unlawful acts has an action for his damages against the author of the wrong."

The cases sustaining this holding are almost innumerable, but among them the following may be noticed:

- H. B. Bowling Coal Co. v. Ruffner*, 117 Tenn. 180, 100 S. W. 116; 9 L. R. A. (N. S.) 923; 10 Ann. Cas. 591, decided February 19, 1907.
Chapman v. City of Rochester, 110 N. Y. 273.
Clifton Iron Co. v. Dye, 87 Ala. 403.
Drake v. Lady Easley Coal Co. 102 Ala. 501; 24 L. R. A. 34.
Elder v. Lykens Valley Coal Co. 157 Pa. 490.
Good v. Altoona, 102 Pa. 403.
Honsee v. Hammond, 30 Barb. 89.
Penn. Am. Plate Glass Co. v. Schwinn, 177 Ind. 645; 98 N. E. 715, decided May 28, 1912.
Straight v. Hover, 79 Ohio St. 263, decided January 26, 1909.
Stockport Waterworks Co. v. Potter, et al. 7 Exch. 159, decided 1861.
Thomas v. Brockney, 17 Barb. 654, decided 1851.
Tennessee Coal, Iron & H. R. Co. v. Hamilton, 100 Ala. 252, decided 1893.
Tetherington v. Donk Bros. Coal & Coke Co. 232 Ill. 522, decided February 20, 1908.
Weston Paper Co. v. Pope, 155 Ind. 304, 56 L. R. A. 890, decided June 22, 1900.
Winchell v. Waukesha, 110 Wis. 101, 85 N. W. 698.

Such a right of action is upheld by the overwhelming weight of authority and appears to have never been denied except under the peculiar circumstances obtaining in cases like the Sanderson case, where the right of the lower owner is made to yield to the rights of an upper proprietor who is developing important natural resources, and, even under those circumstances, only in the States of Pennsylvania and Indiana.

IT IS IMPROPER IN AN ACTION FOR DAMAGES FOR SEVERAL RIPARIAN PROPRIETORS TO JOIN AS PLAINTIFFS. EACH SHOULD SUE SEPARATELY FOR THE DAMAGES HE HAS SUSTAINED.

In *Foreman et al. v. Boyle et al.* (88 Cal. 290, 26 Pac. 94) plaintiffs sued the defendants for damages sustained by them because of the defendants having diverted the water of Canon Creek and the west branch of Canon Creek to natural water courses, upon one of which the plaintiff Foreman owned a tract of land, and upon the other of which the plaintiff Rogers owned a tract. The defendants demurred to the complaint on the grounds that there was a misjoinder of parties plaintiff. This demurrer was overruled, but upon appeal the Supreme Court said:

It will be observed that the plaintiff Foreman owns a tract of land, 15 inches of water, and the ditch which carries the water from West Canon Creek upon her land. Her coplaintiff, Rogers, has no interest whatever in the land, the water, or the ditch. Likewise, plaintiff Rogers owns a tract of land (some distance from Foreman's land), 35 inches of water, and the ditch which carries

the water from Canon Creek upon his land; and his complaint has no interest in such land, water, or ditch.

These plaintiffs claimed in their complaint, and obtained by decree of the court, a joint judgment for damages against the defendants.

It is impossible to see how the plaintiffs have any joint or common interest in the damages recovered or upon what legal basis such damages could be apportioned between them. Respondents' counsel suggest that the plaintiffs are tenants in common, and the damages should be apportioned in proportion to the number of inches of water each owns. This can not be the true rule for it readily can be seen that for many reasons the diversion of the waters by defendants may have caused plaintiff owning 15 inches of water far greater damage than would have been entailed upon plaintiff owning 35 inches of water * * *.

Two or more owners of mills, propelled by water, are interested in preventing an obstruction above that shall interfere with the downflow of the water, and may unite in its restraint or abate it as a nuisance, but they can not hence unite in an action for damages for, as to the injury suffered, there is no community of interest. (Bliss on Code Pleading, sec. 76.)

And in the case of *Geurkink v. city of Petaluma* (112 Cal. 310, 44 Pac. 570) the defendant city was sued for damages and for an injunction, the basis of the action being that it had changed the natural channel of the stream to the injury of both the plaintiffs. The Supreme Court said:

* * * As to the relief sought by injunction the plaintiffs were properly joined, but as to damages there was a misjoinder. If damages are sought for the acts of defendants the plaintiffs must sue separately. (*Foreman v. Boyle*, 88 Cal. 200.)

And to the same effect is the holding of the same court in *Senior v. Anderson* (138 Cal. 723, 72 Pac. 319).

IT HAS BEEN HELD TO BE IMPROPER TO JOIN SEVERAL DEFENDANTS IN AN ACTION FOR DAMAGES ARISING FROM THE POLLUTION OF A STREAM TO WHICH THE VARIOUS DEFENDANTS HAVE CONTRIBUTED INDEPENDENTLY.

In *Witland v. Red Bank Oil Co.* (151 Ill. App. 433) it was said:

A person polluting a watercourse is liable in damages only for his own act, and not for that of any others who may contribute to the injury. If others have contributed, his deposit must be separated by means of the best proof the nature of the case affords, and his liability ascertained accordingly. (2 *Farnham, Waters*, 1716; *Serley v. Alden*, 61 Pa. 302, 100 Am. Dec. 642; *Chipman v. Palmer*, 77 N. Y. 51, 33 Am. Rep. 503.) We are of opinion that the acts of each of the defendants in allowing the escape of oil upon its own premises was separate and independent, and without any connection with the acts of the others, and being a several act when committed, it can not be made joint because of the consequences which followed in connection with others who had done similar acts, and while it is true it is difficult or impracticable to separate the injury, that is no reason why one of the defendants should be liable as a joint tort-feasor (among whom there is no contribution), because of the consequence which followed the acts of others who have not acted in concert with it.

And in *Bowman v. Humphrey* (132 Iowa 234), at page 240, it was said:

* * * Joint liability of wrongdoers, each for all and all for each, exists only where the wrong itself is joint. If the separate wrongful acts of two or more persons, acting independently without concert, plan, or agreement, unite to cause injury to another, such persons are not joint wrongdoers within the meaning of the law, and each is liable to the injured party for only so much of said injury as is chargeable to his own separate individual act. (*Bonte v. Postel*, 100 Ky. 64, 58 S. W. 536, 51 L. R. A. 187; *Sparkman v. Swift*, 81 Ala. 231, 8 South. 100; *Bard v. Yohn*, 20 Pa. 482; *La France v. Krayner*, 42 Iowa, 243; *Harley v. Merrill*, 83 Ohio, 79; *De Donato v. Morrison*, 100 Mo. 581, 61 S. W. 641; *Little Schuylkill Navigation R. & Coal Co. v. Richards*, 57 Pa. 142, 98 Am. Dec. 209; *Wiest v. Electric Traction Co.* 200 Pa. 148, 40 Atl. 981, 58 L. R. A. 606; *Lull v. Improvement Co.* 19 Wis. 101.) As suggested by the Pennsylvania court, if the tort of the parties was several when committed it did not become joint because of the union of the consequences of the several torts in producing an injury. (*Wiest v. Electric Traction Co.*, *supra*; *Galagher v. Kemmerer*, 144 Pa. 500, 22 Atl. 970, 27 Am. St. Rep. 673.)

THERE ARE SOME DECISIONS TO THE CONTRARY, THE REASONING BEING THAT IT IS IMPOSSIBLE TO SEPARATE THE INJURY DONE BY THE SEVERAL CONTRIBUTORS AND THAT TO DENY THEIR JOINT LIABILITY IS TO LEAVE THE LOWER PROPRIETOR WITHOUT REMEDY FOR THE INJURY HE HAS SUSTAINED.

And so it has been held that where several independently contribute to the pollution of the stream and where the damage caused by each is not ascertainable, each is liable for all the damage caused.

In *Day v. Louisville Coal & Coke Co.* (60 W. Va. 27, 53 S. E. 776, 10 L. R. A. (N. S.) 167), where the defendant was sued for damages for having injured the plaintiff, a lower riparian proprietor, through the deposit of slag, cinders, tailings, etc., from the defendant's mine in the stream, the defendant urged that other mines were depositing similar substances in the stream and that the defendant could not be held liable for any damage except such as could be proven to have been caused by its acts. The supreme court said, regarding this contention:

There are some authorities to support this proposition, but the authorities against it very decidedly preponderate, and they harmonize with right, reason, and the established law of centuries. This damage comes from tort, not contract; and it is a rule of law as old as the hills that in a tort all participating or contributing in the wrong working the injury, are liable, and any single one is liable. One can be sued, or more can be sued. It is contended for the defendant that the acts of these different operators were independent of each other, the defendant's act separate and distinct from the other; and that it is only where tort-fensors act jointly that one or all may be sued. This proposition can not be sustained, as will appear from the following authorities (citing cases).

In Indiana it is held that, while generally speaking, it is wrong to join, as defendants in an action for damages, those whose inde-

pendent acts have contributed to the plaintiff's injury without cooperation on the part of the defendants, yet that where the acts which produced the damage not only injure the plaintiff, but create a public nuisance, the defendants may be joined.

In the case of *West Muncie Strawboard Co. v. Slack* (104 Ind. 21) the plaintiffs were tenants in common of farming land on White River, and sued the West Muncie Strawboard Co. and Muncie Pulp Co. and other defendants who were the proprietors of similar mills discharging chemicals and other deleterious substances into Buck Creek and White River, so that they intermingled in the waters of White River above plaintiff's land and rendered the water unfit for stock purposes, caused the deposits of sediment upon the plaintiff's premises, killed vegetation, and damaged the soil.

The Supreme Court of Indiana said:

Objection is made by the appellants that the acts alleged, if done at all, were performed severally and independently by them, and hence there can be no joint liability therefor. It is probably true that an action at law for the recovery of money damages, as distinguished from a suit in equity, can not be maintained jointly against various tort-feasors among whom there is no concert or unity of action and no common design, but whose independent acts united in their consequences to produce the damage in question. (*Miller v. Highland Ditch Co.*, 1891, 87 Cal. 430, 25 Pac. 550, 22 Am. St. 254; *Lockwood Co. v. Lawrence*, 1885, 77 Mo. 207, 52 Am. Rep. 703; *Slattery v. Dilworth*, 1888, 38 Minn. 179, 36 N. W. 451, 8 Am. St. 656; *Martinowsky v. City of Hannibal*, 1889, 35 Mo. App. 70; *Chipman v. Palmer*, 1879, 77 N. Y. 51, 33 Am. Rep. 506; *Blaisdell v. Stephens*, 1879, 14 Nev. 17, 33 Am. Rep. 523; *Long v. Swindell*, 1877, 77 N. C. 176; *Little Schuylkill Nav. etc. Co. v. Richards*, 1898, 57 Pa. St. 142, 98 Am. Dec. 200; *Draper v. Brown* (1902), 115 Wis. 361, 91 N. W. 1001; *The Debris Case* (1883), 15 Fed. 25. And see *Sellick v. Hall* (1879), 47 Conn. 200.)

A distinction, however, is recognized between such acts which are wrongful only because injurious to individual rights, and those which combine and constitute a public nuisance. (*Simmons v. Everson*, 1891, 124 N. Y. 319, 20 N. E. 911, 21 Am. St. 676; *Irvine v. Wood*, 1872, 51 N. Y. 224, 10 Am. Rep. 983; *City of Valparaiso v. Moffitt*, 1895, 12 Ind. App. 250, 255, 54 Am. St. 522.)

In the former class of cases each separate wrongdoer is chargeable with his own acts alone, in the absence of a joint purpose among the participants; in the latter, each may be answerable in a joint and several action not only for what he himself does, but likewise for the acts of those who, with him, violate public as well as private rights. If a party deliberately places himself in opposition to the entire community by performing an act which, in combination with the independent wrongful acts of others, violates an express statute and creates a public nuisance, he is not in a position to assert that he should be held responsible to individuals specially damaged for only the actual loss he alone has occasioned them. He must have anticipated the natural and probable consequences of his acts, namely, the violation of a public right; and the public interest requires he shall, if need be, even in a civil action, bear the full burden of the wrong he has assisted in inflicting. Nor is it material that his act of itself, and without reference to the cooperation of others, would create a public nuisance. He must be deemed to know, in a case such as the present, that, if his wrong combines with similar acts of

third parties, the result will be to intensify the public and private injury. The welfare of the community demands that he who thus intentionally and aggressively assists either in creating or maintaining a public nuisance in defiance of positive enactments shall answer in civil damages for all injurious consequences proximately resulting therefrom to private individuals who bring themselves within the requirements of the law.

There can be no question but that the acts of the appellants constituted a public nuisance (sec. 2154 Burns, 1901; sec. 2060 R. S., 1881; *City of Valparaiso v. Moffitt*, *supra*), and hence they could be held jointly and severally liable at the suit of parties specially damaged.

The case of *West Muncie Strawboard Co. v. Slack*, does not appear to have been followed upon the proposition that when the pollution of a stream amounts to public nuisance, those creating the nuisance are jointly liable.

In an exhaustive opinion the Ohio Supreme Court in the *City of Mansfield v. Briston* (76 Ohio St. 270, 81 N. E. 631, 118 Am. St. Rep. 852), decided January, 1907, reviewed at very great length the authorities holding that there is no joint liability among those who pollute a stream independently and then said:

The cases have been noticed at such great length because in the recent case of *West Muncie Strawboard Co. v. Slack* (164 Ind. 21, 72 N. E. 879), it is said: "A distinction, however, is recognized between such acts which are wrongful only because injurious to individual rights and those which combine and constitute a public nuisance." And it was there ruled that "one who creates a public nuisance is responsible to individuals especially damaged, not only for the actual loss he alone has occasioned them, but also for the damages caused by similar acts of third persons which independently occur in causing the injury complained of."

The Ohio Supreme Court, after quoting further from the Indiana case, analyzes the authorities cited by the Indiana court to sustain its position, and then says:

* * * It will be observed that in none of these cases is the fact that the act was a public nuisance, as distinguished from a private nuisance, given as a ground of joint liability. Indeed, *Slater v. Mersereau* (225, 64 N. Y. 138) is a case not of public but of private nuisance.

The distinction suggested in *West Muncie Strawboard Co. v. Slack* (164 Ind. 21, 72 N. E. 879) has no foundation in precedent, and is not believed to be maintainable on principle. The distinction assumes that several torts have been committed, but holds the perpetrator of one liable for the damage from all on the sole ground that his act is a public wrong. If I give you a beating to-day, or rather, if you to-day beat me and to-morrow another does likewise, and in consequence I take to bed, are you liable to me in damages for all of my injuries because your act was unlawful?

Both logic and the great weight of authority would seem to be upon the side of the denial of joint liability in the absence of joint action. It is obvious, on one hand, that very great injustice might be done to an upper proprietor, who had contributed somewhat to the pollution of the stream, by holding him liable for all of the in-

juries sustained by some lower proprietor; in other words, he might be held liable, in an amount out of all proportion to the damage caused by himself, and such would be the necessary result of recognizing joint liability at all, because there is no contribution among joint tort-feasors. On the other hand, to deny joint liability in an action for damages does not deprive the lower proprietor of his universally recognized right to bring a single action for injunction against all contributors, and if such action be brought promptly, it would seem that in most cases the mischief could be stopped before any great damage had accrued.

Moreover, the difficulty of separating the damage done by one upper proprietor from that done by another might not be of as great practical importance as would at first appear. In any action for damages, the plaintiff would have to show, first, that he had been substantially injured, and, secondly, that the action of the defendant had produced that injury. Would it be too great a burden to require the plaintiff to go further and show the proportion of the aggregate damage caused by the particular defendant?

SO WHERE THE CAUSE OF INJURY TO A STREAM HAS BEEN MAINTAINED BY SUCCEEDING PROPRIETORS, THE LOWER PROPRIETOR WILL NOT BE PERMITTED TO JOIN THEM IN AN ACTION FOR DAMAGES BUT MUST SUE EACH SEPARATELY.

Greene v. Nunemacher, 36 Wis. 50.

AN UNREASONABLE USE OF A STREAM WHICH POLLUTES IT TO THE INJURY OF A LOWER RIPARIAN PROPRIETOR WILL BE ENJOINED.

In *Holsman v. Boiling Spring Bleaching Co.* (14 N. J. Eq. 335), decided 1862, it was said:

* * * It is a familiar exercise of the power of the court to prevent by injunction injury to watercourses by obstruction or diversion. (*Fitch v. Res-bridger*, 2 Vern. 390; *Bush v. Western*, Prec. in Chan. 530; *Gardner v. Village of Newburgh*, 2 Johns. Ch. R. 165; *Shields v. Arndt*, 3 Green's Ch. R. 234.)

The right of the riparian proprietor, says Chancellor Kent, to the use and enjoyment of a stream of water in its natural state is as sacred as the right to the soil itself. It is a part of the freehold of which no man can be dis-selized but by lawful judgment of his peers or by due process of law. (2 Johns. Ch. R. 166.)

A disturbance or deprivation of that right is an irreparable injury for which an injunction will issue.

If the deprivation of the use of the water by diversion constitutes such an irreparable injury as will be restrained by injunction, the deprivation of its use, by so corrupting it as to render it unfit for use, is an equally irreparable injury entitling the party injured to the like preventive remedy.

In *Davis v. Lambertson* (56 Barb. 480), it was said:

* * * The law does not allow one to appropriate or injure the property of another permanently, offensively, and annoyingly, and compel the plaintiff to seek redress in successive suits at law; especially where it is so difficult, as in this case, to give any exact proof of the actual damages.

It does not allow the property of one man to be taken for the use of any other person or association, except in the cases prescribed in the Constitution, either with or without compensation, and I can see no difference between the allowing the taking of it against his consent or allowing another to use his own property in such a manner as to pollute it, and seriously impair its value and use. In short, exact justice can only be done by the courts, in such cases, where they restore the injured party, so far as they can, to the rights of which he has been deprived.

In *Beach v. Sterling Iron & Zinc Co.* (9 Dick., N. J. 65) the following language is used:

The result of my consideration of the subject is that there is no principle which will sustain a court of equity in refusing an injunction against the maintenance of an established continuing nuisance and leaving the injured party to his remedy at law. To do so is, in effect, to permit a party to take his neighbor's land for his own use upon terms of making such compensation as a jury shall assess. This is inadmissible.

In *Indianapolis Water Co. v. American Strawboard Co.* (53 Fed. Rep. 970), decided 1893, Judge Baker says:

* * * The depositing of any substances in the stream which corrupt or pollute the water to such a degree as essentially to impair its purity, and prevent its use for any reasonable and proper purpose to which running water is usually applied, is an infringement of the right of other owners of land through which the stream flows. An action for damages may be maintained by a riparian proprietor for the pollution of a stream. So a perpetual injunction will be granted to restrain such pollution, especially if it is of a continuous nature, even when the plaintiff could only recover nominal damages at law, because of the inconvenience of repeated actions, and the danger of the acquisition of an adverse right to pollute it by its continuance for 20 years. So, also, a perpetual injunction will be granted to restrain the pollution of a stream where the nature of the injury is such as to render it difficult or impracticable to adequately measure the damages, and fully compensate for the wrong. (Gould, *Waters* (2d ed.), par. 223, and cases cited in note 1; *Merrifield v. Lombard*, 13 Allen 16; *Lyon v. McLaughlin*, 32 Vt. 423; *Holsman v. Spring Bleaching Co.* 14 N. J. Eq. 335; *High Inj.* (3 ed.), pars. 749-795.)

Other important cases in which an injunction has been granted in suits between private riparian proprietors are:

Lockwood Co. v. Lawrence, 77 Me. 297, decided Apr. 22, 1885.

Carhart v. Auburn Gas Light Co., 22 Barb. 297.

Middlestadt v. Waupaca Starch & Potato Co., 93 Wis. 1.

Parker v. American Woolen Co., 105 Mass. 591; 81 N. E. 468; 10 L. R. A. (N. S.) 584.

Richmond Manufacturing Co. v. Atlantic De Laine Co., 10 R. I. 106.

Sandusky Portland Cement Co. v. Dixon Pure Ice Co. 221 Fed. 200; L. R. A. 1915 E. 1210; decided Jan. 15, 1915.

Silver Spring Bleaching & Dyeing Co. v. The Wanskuck Co., 13 R. I. 611, decided Feb. 11, 1882.

Strobel v. Kerr Salt Co., 164 N. Y. 303, decided 1900,

wherein it was said:

* * * Where the natural and necessary result of the place selected, and the method adopted by an upper riparian owner in the conduct of his business is to cause material injury to the property of an owner below, a court of equity

will exercise its power to restrain on account of the inadequacy of the remedy at law and in order to prevent a multiplicity of suits.

Western Paper Co. v. Pope, 155 Ind. 394; 56 L. R. A. 899; decided June 22, 1900.

Worthen & Aldrich v. White Spring Paper Co., 74 N. J. Eq. 647, decided June 10, 1908.

where the contention of the defendant that the remedy of the plaintiff was an action at law for damages only and not by injunction, was thus summarily disposed of:

The claim made by the defendant that the complainant's remedy for the injury is by common-law action for damages is effectually disposed of by the Beach case.

Woodyear v. Schaefer, 57 Dd. 1.

Barton v. Union Cattle Co., 28 Nebr. 350; 44 N. W. 434, 7 L. R. A. 457.

Canfield v. Andrew, 54 Vt. 1, decided 1882.

MacNamara v. Taft, 196 Mass. 597; 83 N. E. 310; 13 L. R. A. (N. S.) 1044; decided Jan. 1, 1908.

Baxendale v. McMurray, L. R. 2 Ch. 790 (1867).

Red River Roller Mills v. Wright, 30 Minn. 249, decided 1883.

SEVERAL WHO CONTRIBUTE INDIVIDUALLY TO THE POLLUTION OF THE SAME STREAM MAY BE JOINED AS DEFENDANTS IN ONE SUIT FOR AN INJUNCTION.

Thus in *Lockwood Co. v. Lawrence* (77 Me. 297), decided April 22, 1885, the defendants were a number of proprietors of mills on the Kennebec River. From the different mills there was discharged sawdust, edgings, shavings, refuse wood, and other debris, which became commingled into one indistinguishable mass and flowed into the ponds, raceways, etc., of the complainants, lower proprietors on the streams, and injured their wheels and retarded their manufacturing operations, they being the proprietors of a cotton mill.

The defendants insisted that, as their acts were individual and separate, they could not be joined as defendants in one action. The court held, however, that although the acts of the different defendants may have been individual and separate, yet—

There is cooperation in fact in the production of the nuisance "and held that in equity it was" proper to join defendants individually contributing to the pollution of the same stream, although in an action of law for damages the rule would be different.

And cited as sustaining this holding the following cases:

Woodruff v. Northbloomfield Gravel Mining Co., 8 Sawyer (U. S. C. C.) 628;

Hillman v. Newington, 57 Cal. 56;

Blaisdell v. Stephens, 14 Nev. 17;

Pomeroy's Equitable Jurisdiction, para. 269, 1394;

Chipman v. Palmer, 77 N. Y. 56;

Duke of Buccleugh v. Coman, 5 Macph. 214;

Crosley v. Lightowler, 3 L. R. Eq. 279;

Thorpe v. Brumfit, 8 L. R. Ch. App. 650.

In *Warren v. Parkhurst* (45 N. Y. 466; 78 N. E. 579; 6 L. R. A. (N. S.) 1149) plaintiff filed a bill against a number of defendants, charging that they were all polluting a stream upon which plaintiff was lower proprietor and that—

the damages suffered by the plaintiff from the pollution of the stream by any one defendant, if there were no other sources of pollution, would be nominal; but from the concurring and continuous trespass of all the defendants, the injury which the plaintiff and his lands sustain is great, and, if the said nuisance is continued, will be irreparable, and the said lands and tenements will be rendered wholly worthless for domestic or other purposes.

The New York court of appeals upheld the right of the plaintiff to sue these defendants jointly in one action, relying very largely on the authority of *Lockwood Co. v. Lawrence* (supra).

SEVERAL INDIVIDUALS WHO ARE INJURED BY THE POLLUTION OF THE SAME STREAM MAY JOIN IN AN ACTION FOR AN INJUNCTION.

In *Middleton v. Flat River Booming Co.*, Judge Cooley said:

This was a bill in equity by a number of owners of mills and factories on Flat River, to enjoin the defendants from various acts which it is alleged tend to render the water power by which their machinery is operated of little value to them. The bill was demurred to on various grounds and was dismissed in the court below.

One objection is that the parties complainant have no common interest. They are owners of several mills, and only have a common interest in the question involved. The case is within the decision in *Scofield v. Lansing* (17 Mich. 437). No accounting is asked for by complainants, and so far as the bill discloses the facts, the question is single, and no embarrassment can be occasioned by this joinder of complainants.

And in *Strobel v. Kerr Salt Co.* (164 N. Y. 303), decided 1900, where 14 plaintiffs owning various mills on the Oatka Creek, joined in a suit for an injunction against the defendant corporation, engaged in the manufacture of salt above all of the mills of the different plaintiffs, to prevent the defendant from continuing to divert and pollute the water of the stream, the defendant insisted that the plaintiffs were improperly joined, but the New York court of appeals said:

The objection that the plaintiffs have no cause of action common to all, and hence that they can not sue jointly, is unsound. While each owns a distinct piece of land situated upon a part of the stream separate from that abutted upon by the land of every other owner, they all have a common grievance against the defendant for an injury of the same kind, inflicted at the same time and by the same acts. The common injury, although differing in degree as to each owner, makes a common interest and warrants a common remedy. (*Emery v. Erskine*, 66 Barb. 9, 14; *Reid v. Gifford*, *Hopkins' Ch.* 416, 477; *Murray v. Hay*, 1 Barb. Ch. 59, 62; *Blunt v. Hay*, 4 Sand. Ch. 362.

TO ENTITLE A RIPARIAN OWNER TO AN INJUNCTION AGAINST POLLUTING A STREAM, THE INJURY OF WHICH HE COMPLAINS MUST BE REAL AND MATERIAL.

Boyd *v.* Schreiner, 116 S. W. 100; decided Jan. 27, 1909.
Indianapolis Water Co. *v.* American Strawboard Co., 57
Fed. Rep., 1000, decided 1893,

wherein it was said:

* * * courts will not interpose by injunction to prevent a mere eventual or contingent nuisance, nor will they interpose when the injury is remote or contingent, and rests merely in speculation. A very strong case must be made by the bill to justify the court in granting injunctive relief; and, if there is reasonable doubt of the effect of the alleged nuisance on the construction of the facts alleged in the bill, there will be no interference until the matter is tested by actual experience.

MacNamara *v.* Taft, 196 Mass. 597; 83 N. E. 310; 13
L. R. A. (N. S.) 1044; decided Jan. 1, 1908.
Snow *v.* Parsons, 28 Vt. 459.
Hayes *v.* Waldron, 44 N. H. 580.
Red River Roller Mills *v.* Wright, 30 Minn. 249.

BUT ALTHOUGH THE INJURY TO THE STREAM MUST BE REAL IN ORDER TO ENTITLE THE PLAINTIFF TO INJUNCTIVE RELIEF, IT DOES NOT FOLLOW THAT THE PLAINTIFF MUST HAVE SUFFERED ANY ACTUAL DAMAGE IN HIS PRESENT USE OF THE STREAM.

In New York Rubber Co. *v.* Rothery (132 N. Y. 293) the action was for damages arising from diversion of water and not pollution, but the reason upon which the decision rests is equally applicable to pollution cases. In that case the court charged the jury that the question involved was—

Have the Rotherys, by this watercourse, diverted the water so as to leave the stream to a material and appreciable extent insufficient for the purposes of plaintiff's business? Now, gentlemen, that is all there is of the case.

The plaintiff had requested the court to charge—

that the plaintiff's right to maintain this action and to recover a verdict for nominal damages does not depend at all upon the plaintiff's showing any actual or any perceptible damage, but solely upon the question whether the defendants have, by the use of their race, at any season of the year diverted water from Matteawan Creek, and thereby have reduced perceptibly and materially the volume or current of water which otherwise would have flowed by the plaintiff's premises.

and this request has been refused. The court of appeals said:

Both the charge and refusal were erroneous.

The plaintiff's right to recover nominal damages was substantial, though the quantity of damages was not. The defendants probably did leave water

enough in the stream for the purposes of the plaintiff's business, as that business had been conducted. But the plaintiff's title to its water rights, and its right to redress for their invasion were not conditional upon the beneficial user of them. (*Corning v. Troy Iron & Nail Factory*, 40 N. Y. 191; *Crooker v. Bragg*, 10 Wend. 260, 25 Am. Dec. 555; *Webb v. Portland Mfg. Co.* 3 Sumner, 189; *Parker v. Griswold*, 17 Conn. 288, 42 Am. Dec. 739; *Clark v. Penn. R. R. Co.*, 22 Atlantic Rep. 989.)

The plaintiff may, however, lose its title by the defendants' prolonged adverse user of the water of the stream, and this is the more probable if such adverse user is protected by the verdict of the jury. It is not improbable that this action was brought to prevent the defendants from acquiring a prescriptive right to divert the water. * * *

In such a case nominal damages given confirm the plaintiff's right, but withheld, impeach, and may destroy it. (*Hammon v. Zehner*, 21 N. Y. 118.)

The request to charge presented the plaintiff's rights clearly. (*Garwood v. New York Cent. etc., R. Co.*, 116 N. Y. 649.)

In *Gladfelter v. Walker* (40 Md. 1) it was said:

* * * The plaintiff sues for an invasion of his rights by the defendant, and if such rights have been invaded, an action will lie, although he may not have suffered any actual damage.

Otherwise the defendant, by continuing the practice for 20 years, might establish as against the plaintiff, the right to discharge into the stream the foul water from his mill. (*Wood v. Waud*, 3 Exch. 772; *Embrey v. Owen*, 6 Exch. 353; *Johns v. Stevens*, 3 Vt. 308; *Thomas v. Brackney*, 17 Barb. 654; *Ripka v. Sergeant*, 7 Watts & Ser., 9.)

And in *Parker v. American Woolen Co.* (195 Mass. 591; 81 N. E. (N. S.) 468; 10 L. R. A. 584) the Supreme Court of Massachusetts said:

* * * Nor can we doubt that the plaintiff is entitled to an injunction to restrain the defendant from continuing to pollute the stream, in order to prevent it from gaining a prescriptive right, even though such pollution does not interfere with any use of the water which the plaintiff is now making.

An opposite view was taken by the Supreme Court of Maine in the case of *Lockwood Co. v. Lawrence* (77 Me. 297), decided April 22, 1885. In that case the defendants contended that they had acquired a prescriptive right to discharge the waste matter complained of into the Kennebec River, having so utilized the river for more than the statutory period. It appears to have been conceded by the court that the defendants had so used the stream for the requisite period, but the court took the position that such use was not in the early part of the period adverse, because at that time the lower riparian proprietors were using the stream for such purposes as saw-mills, tanneries, etc., and that the use made by the defendants only became adverse at a later time when the plaintiff installed its cotton mills.

The reasoning of the court is based on the proposition that—

* * * It is well settled that in order to establish the presumption of a right or easement in the land or waters of another person, the enjoyment of such right must have been uninterrupted, adverse, under claim of right, and with the knowledge of the owner, or with such acts that knowledge will be presumed (citing cases). And it must have been inconsistent with or contrary to the interest of the owner, and of such a nature that it is difficult or impossible to account for it, except on the presumption of a grant from him, otherwise no such presumption arises (citing cases). The prescriptive right to the use of a stream beyond the general right of reasonable use, as against other riparian owners is governed by the same principles as those in relation to easements in land, and in order to establish such right there must be a perceptible amount of injury throughout the period necessary to gain such right.

The court further quoted from *Holsman v. Boiling Spring Bleaching Co.* (1 McCarter 335) to sustain its position.

It would seem that the premises of the court, namely, that a prescriptive right can not accrue except during the period when actual injury is caused, is erroneous. It is true that the very nature of a prescriptive right is such that it can only arise from an invasion of a legal right throughout the entire statutory period, but legal right is not synonymous with actual injury, and it has been held repeatedly that even when no actual injury is caused by the upper riparian proprietor he may even yet be enjoined where the right of the lower owner is invaded and this for the very purpose of preventing the adverse use from ripening into a prescriptive right. *Parker v. American Woolen Co.* (195 Mass. 591) is a conspicuous instance of the grant of such relief even though the complainant's present use of the stream was not such as that he suffered actual injury. It would seem to follow that the plaintiff's predecessors in title must have had the right to enjoin these defendants, and, that if they failed to do so, the prescriptive right must have accrued.

Further, if the court's position be correct it would seem to follow that no right by prescription could be acquired in any case unless and until it had been acquired against lower proprietors actually making such use of the stream as requires the highest degree of purity in the water.

In the case of *Ulbricht v. Eufaula Water Co.* (86 Ala. 587; 6 So. 78; 4 L. R. A. 572; 11 Am. St. 72), decided 1889, there was no question of pollution involved, the action being one for diversion of water, but the reasoning would apply with equal force to a suit where the injury was caused by pollution. In that case—

* * * The grievance complained of is that the defendant, an upper riparian owner, by the construction of a dam and a reservoir, and the diversion of so large a quantity of the running stream, is guilty of an unlawful act prejudicial to the rights of the complainant, as a lower riparian owner on the same stream.

The suit was to enjoin this diversion. The court said:

The testimony fully establishes the diversion of the water for the purpose mentioned, resulting in a sensible diminution in the flow of the stream, at least in the dry season or summer months. It further shows, however, that the complainant was making no particular use of the stream, having no mill or other industry on it, and therefore that he suffered no special damage by the act of defendant. The chancellor was of opinion "that the owner below ought not to be permitted by injunction to hinder the owner above from the consumption of water which the former can not and does not use." An injunction was nevertheless granted, "perpetually restraining the defendant from the consumption of the whole or any part of said stream for the use of said waterworks in supplying the city, to the sensible injury or damage of the complainant, for any purpose for which he may now or in the future have use for said water." The defendant was also enjoined from backing any portion of the water of the stream on the lands of the complainant to an extent damaging to him. The chancellor admitted the right of the complainant also to prevent the defendant from so using the water as to acquire an easement by an adverse user of any or all the water of the stream for supplying said waterworks, and the complainant is declared to be entitled to the reasonable use of the flowing waters of said stream, as against the defendant, whenever he shall need it. It is our opinion that there is no error in this decree, and that it secures to the complainant all that to which he is equitably entitled in this suit. * * *

It is our opinion that the aid of injunctive relief was carried by the chancellor's decree as far as it ought to be, in view of the facts of this case. It fully protects the complainant from injury, present and future, resulting from the use of the water by the defendant—a privilege of inestimable value to defendant and of no special value to the complainant. The granting of the injunction in the broad terms asked would be of great inconvenience and even injury to the defendant, without being of any corresponding benefit to complainant.

The decree is affirmed.

It would seem that this disposition of the controversy has much to commend it. The injunction established the complainant's right to the flow of water and prevented the acquisition by the defendant of any prescriptive right. The water company was not enjoined against diverting the water, so long as such diversion should continue to be harmless. On the other hand, it was not permitted to divert the water to the interference of any use of the stream which the complainant might see fit to make. Had the court granted an absolute injunction against any diversion of the water that would interfere with the abstract right of the complainant, it would have placed the water company in a position where it would have been at the mercy of the complainant and might have been forced either to abandon its operations and its investment or buy off the complainant at his own price. While it would seem on the one hand that a riparian owner's rights of the stream ought not to be limited to the mere extent of his present use, yet on the other hand, if his right to future use is preserved by the terms of injunction, how can he complain that the defendant has not been forced to abandon operations before the necessity arises?

IN SUITS FOR INJUNCTION AGAINST POLLUTION OF STREAMS THE GENERAL RULE THAT A NUISANCE WILL NOT BE ENJOINED IN AN EQUITY SUIT UNTIL ITS EXISTENCE HAS FIRST BEEN ESTABLISHED IN AN ACTION AT LAW DOES NOT OBTAIN, THE REASON BEING THAT THE DELAY INCIDENT TO THE ESTABLISHING OF THE RIGHT IN AN ACTION AT LAW MIGHT CAUSE IRREPARABLE INJURY.

In the case of the *Village of Dwight v. Hayes* (150 Ill. 273) the court said:

* * * The decree of the circuit court dismissing the bill is sought to be sustained on the ground that before the complainant is entitled to an injunction he must bring his suit at law and have his right determined by a jury. While it is a general rule, and one which was formerly enforced with very considerable strictness, that before a court of equity will interfere by injunction to restrain a private nuisance the complainant must establish his right in a court of law, that rule has in modern times been somewhat relaxed. In *Oswald v. Wolf* (120 Ill. 200). In discussing this branch of equity jurisdiction, we said: "Even this power was formerly exercised very sparingly and only in extreme cases, at least until after the right and question of nuisance had been settled at law. While in modern times the strictness of this rule has been somewhat relaxed, there is still a substantial agreement among the authorities that to entitle a party to equitable relief before resorting to a court of law his case must be clear, so as to be free from all substantial doubt as to his right to relief."

We are disposed to think that the complainant's case is one which, within the rule as thus laid down, entitles him to an injunction without having first established his right at law. None of the substantial facts upon which his right rests are controverted. * * *

* * * That the sewage of a village of 1,600 inhabitants discharged into a small stream will materially pollute the water of the stream and render it unfit for domestic use for at least a few rods below the point of discharge is a proposition too plain and too thoroughly verified by ordinary experience and observation to admit of reasonable doubt. That such disposition by the village of its sewage will create and constitute a nuisance per se is a proposition too plain for serious question. * * *

In the case of *Lockwood Co. v. Lawrence* (77 Me. 297) the court discussed this question at some length, and its conclusion that it is not necessary to establish the existence of a nuisance in a suit at law before suing at equity where the injury would be irreparable, it is sustained by the authorities which the court cites. The following is from the opinion:

* * * It is well settled that private nuisances may, under some circumstances, fall within the jurisdiction of a court of equity in reference to obtaining relief from further molestation by restraining the acts which constitute the nuisance.

Nuisances and injuries affecting waters, including the obstruction, diversion, or pollution of streams, afford frequent ground for equitable interference on the principle of restraining irreparable mischief. The jurisdiction of equity in this class of cases may be regarded as ancient and well established. Especially is this true when the acts complained of are of such a character

that irreparable injury will result to the complainant without such interference or when adequate compensation for the injury arising therefrom may not be obtained at law, or, if continued, would lead to a multiplicity of suits. Whenever this is admitted or established by proof a court of equity may, by injunction, restrain the continuance of such acts. (*Canfield v. Andrew*, 54 Vt. 1.)

It is true that "It is not every case which would furnish a right of action against a party for a nuisance which will justify the interposition of a court of equity to redress the injury or remove the annoyance." (*Story, Eq. Jur.* 925.) And the general rule, as claimed by the learned counsel for the respondents, is that where a nuisance is claimed to exist the fact of its existence should, ordinarily, be established by a suit at law before a court of equity will interfere. This rule, however, is not without exceptions. The ground upon which equity takes jurisdiction is that the injury complained of is irreparable or of such a nature that there is no adequate remedy at law. An examination of the cases which sustain the doctrine of the necessity of the prior interposition of an action at law admit that in cases of pressing or imperious necessity, or where the right is in danger of being injured or destroyed, or there is no adequate remedy at law, equity will intervene. (*Varney v. Pope*, 60 Maine, 195; *Porter v. Whitham*, 17 Maine, 294; *Morse v. Machias Water Power Co.* 42 Maine, 127, 128; *Parker v. Winnepesaukee Lake Co.* 2 Black, 552; *Coe v. Winnepesaukee Mfg. Co.* 37 N. H., 263; *Gould on Waters*, 506, and cases cited.)

As stated by Chancellor Kent in *Gardner v. Newburgh* (2 Johns. ch. 165): "The foundation of jurisdiction in such a case is the necessity of a preventive remedy when great and immediate mischief or material injury would arise to the comfort and enjoyment of property." The fact that the complainant has not established his right at law is no ground for demurrer to the bill. (*Koltan v. De Held*, 2 Blm. N. H. 133; *Robeson v. Pittenger*, 1 Green, ch. 57; *Holsman v. Boiling Spring Co.* 1 McCarter, 335; *Olmsted v. Loomis*, 9 N. Y. 432.)

And by irreparable injury is meant one for which there is no adequate remedy at law. (*Gould on Waters*, 506.) "To deprive a plaintiff of the aid of equity by injunction it must also appear that the remedy at law is plain and adequate; in other words, that it is as practical and efficient to secure the ends of justice and its proper and prompt administration as is the remedy in equity. And unless this is shown a court of equity may lend its extraordinary aid by injunction, notwithstanding the existence of a remedy at law." (1 High on Inj. 30; *Boyce's Exr's v. Grundy*, 3 Pet. 215.) Especially is this the case where the injury is of such a nature as from its continuance or permanent mischief must cause a constantly recurring grievance which can not otherwise be prevented. (*Adams, Eq.* 211; *Belknap v. Trimble*, 3 Paige, 601; *Webster v. Gage*, 39 N. H. 186, 187; *Merrifield v. Lombard*, 18 Allen, 18; *Cadigan v. Brown*, 120 Mass. 494.) In such case an action at law affords no adequate remedy, and vexatious litigation and multiplicity of suits, which equity seeks to avoid, would afford just grounds for equitable interference. (*Clark v. Stewart*, 56 Wis. 154.) The very difficulty of obtaining substantial damages was stated to be a ground for relief by injunction. (*Jones v. Staffordshire Potteries Co.* 8 L. R. Ch. Ap. 125. * * *

* * * The court in Massachusetts has very recently had occasion to allude to this question in a case relating to the rights of riparian owners where the waters in a natural stream were polluted, in which case the court say: "The defendant contends that, according to the general principles of the common law, the plaintiff has a complete remedy upon the facts alleged by him, and that he should be compelled to resort to his action at law before seeking relief

in equity. But it is quite clear that a bill in equity may be maintained by a riparian owner to restrain another from polluting the stream to the plaintiffs' material injury. (*Merrifield v. Lombard*, 13 Allen, 16; *Woodward v. Worcester*, 121 Mass. 245.) The acts of the defendant, as alleged, tend to create a nuisance of a continuous nature, for which an action at law can furnish no adequate relief." (*Harris v. Mackintosh*, 133 Mass. 230.)

Equity, as well as the common law, has growth. It is said that prior to Lord Eldon's time injunctions were rarely issued by courts of equity, but that with the development of equity jurisprudence it has become of frequent use. In the earlier history of the jurisprudence relating to this branch of the law, it was rarely issued in the case of a private nuisance until the plaintiff's right had been established in a suit at law. "But now," say the court in *Campbell v. Seaman* (63 N. Y. 582), "a suit at law is no longer a preliminary, and the right to an injunction, in a proper case, in England and most of the States, is just as fixed and certain as the right to any other provisional remedy. The writ can rightfully be demanded to prevent irreparable injury, interminable litigation, and a multiplicity of suits."

And in *Beach v. Sterling Iron & Zinc Co.* (9 Dick (N. J.) 65), the court said:

* * * The object and office of a verdict and judgment at law is to establish the right and give compensation for past injuries. The right being once made clear, whether by judgment at law or upon incontrovertible rules of law and well-established facts, the remedy in equity by injunction to prevent future injury is a matter of right, and the relief can not be refused * * *."

WHERE THE EFFECT PRODUCED BY THE POLLUTION OF A STREAM AMOUNTS TO A PUBLIC NUISANCE, THE STATE BY ITS ATTORNEY GENERAL MAY BRING AN ACTION FOR AN INJUNCTION AGAINST THE CONTINUANCE OF THE POLLUTION.

In a very important case that arose in Michigan, a careful and painstaking opinion was written by Mr. Justice Stone, in the course of which he said:

If the city of Grand Rapids in emptying its sewage into Grand River, as shown by the evidence, creates a nuisance to the public or riparian proprietors below the city, the continuance or creation of that nuisance may properly be restrained by injunction, and the attorney general is a proper complainant.

In *Missouri v. Illinois* (180 U. S. 208, 21 Sup. Ct. 331, 45 L. Ed. 497) a bill to restrain the pollution of the waters of the Mississippi River by emptying into it the sewage of Chicago, through the drainage canal, was demurred to; two of the grounds being that it was not a proper subject for an injunction, and that, as the State was not interested, it was not properly instituted by the attorney general on its behalf. The United States Supreme Court overruled the demurrer, and held that the proceeding did affect the public at large, presented a case for equitable inquiry, and stated, among other things: "The health and comfort of the large communities inhabiting those parts of the State situated on the Mississippi River are not alone concerned, but contagious and typhoidal diseases, introduced in the river communities, may spread themselves throughout the territory of the State. Moreover, substantial impairment of the health and prosperity of the towns and cities of the State situated on the Mississippi River, including its commercial metropolis, would injuriously affect the entire State." The court further said, quoting from *Attorney General v. Jamaica*

Pond Aqueduct Corporation (133 Mass. 361): "The cases are numerous in which it has been held that the attorney general may maintain an information in equity to restrain a corporation, exercising the right of eminent domain under a power delegated to it by the legislature, from any abuse or perversion of the powers which may create a public nuisance or injuriously affect or endanger the public interests"—citing many cases. (Attorney General v. City of Grand Rapids, 175 Mich. 503, 141 N. W. 890, decided May 28, 1913.)

AS AGAINST A LOWER RIPARIAN PROPRIETOR A RIGHT TO POLLUTE A STREAM MAY BE ACQUIRED BY PRESCRIPTION.

In Alabama Consolidated Coal & Iron Co. v. Turner (145 Ala. 639), the action was for damages for taking water from a running stream and for polluting the same by allowing to be discharged therein polluting matter from the ore washers of the mining company. The defendant company pleaded the statute of limitations, claiming that it had used the waters of the creek for more than 10 years before the commencement of the suit in substantially the same manner as at the time the suit was brought and had thus acquired the right as against the plaintiff so to use the water. The plaintiff demurred to this plea and its demurrer was sustained by the lower court, but upon appeal the Supreme Court said:

* * * In this we apprehend the court erred. The question seems to have been definitely settled in *Stein v. Burden* (24 Ala. 148, 60 Am. Dec. 453), and approval by other adjudications of the court. As was then said: "It is the established doctrine that the exclusive enjoyment of the water, or any other easement, in a particular way, for the length of time which is the period of statute of limitations, enjoyed without interruption, is sufficient to raise a presumption of title, as against a right in any other person, which might have been but was not asserted." *Ulbricht v. E. W. Co.* 86 Ala. 592, 6 South. 78, 4 L. R. A. 572, 11 Am. St. Rep. 72; *Crabtree v. Baker*, 75 Ala. 91, 51 Am. Rep. 424; *Mjnlnger v. Norwood*, 72 Ala. 285, 47 Am. Dec. 412; *Wright v. Moore*, 39 Ala. 593, 82 Am. Dec. 731.)

Angell on the Law of Water Courses, 205, holding to the doctrine that any man has the right to have the advantage of a flow of water on his own land, without diminution or alteration, lays down the doctrine that an adverse right may exist founded on the occupation of another, stating: "And although the stream be either diminished in quantity, or even corrupted in quality, as by means of the exercise of certain trades, yet if the occupation of the party so taking and using it has existed for so long a time as may raise the presumption of a grant, the other party, whose land is below, must take the stream subject to such adverse right." Am. & Eng. Ency. Law (2d Ed.) 875; 22 Am. & Eng. Ency. Law (2d Ed.) 1187.

BUT WHERE A RIGHT BY PRESCRIPTION IS ACQUIRED, IT IS LIMITED TO THE USE ACTUALLY MADE DURING THE ENTIRE STATUTORY PERIOD.

In *Goldsmid v. Tunbridge Wells Improv. Commissioners* (L. R. 1, ch. 349) an action was brought against the defendant sewer commissioners to restrain them from continuing to permit the sewer

drainage from the town of Tunbridge Wells to flow into Calverley Brook to the injury of the plaintiff, who was a lower proprietor on the brook. The defendants claimed a right by prescription, and it appeared that for some years the sewage had been discharged into the stream, but that only within the few years next preceding the filing of the bill had the water become foul and unwholesome, the reason being that the population of the city had greatly increased within those years.

And the court held that no prescriptive right had been acquired, that such right could only be acquired, if at all—

by a continuance of the discharge of the sewage prejudicially affecting the estate, at least to some extent, for the period of 20 years,

and found from the evidence that the estate had not been prejudicially affected for so long a period.

In *City of Richmond v. Test* (18 Ind. App. 482), while upholding the right of the city to discharge its sewage into the stream, refused to allow such right to rest upon the ground of prescription. In that case, the city had greatly increased the amount of sewage which had been dumped into the stream and had also decreased the capacity of the stream within a short time before the commencement of the action. The court held that the prescriptive right of the city would be limited to the use made of the stream at the beginning of the statutory period.

And in *Prentice v. Geiger* (74 N. Y. 341), at page 346, Judge Andrews said:

Upon the question of prescription, the court charged the jury, in substance, that to constitute a right in the defendant by prescription to throw the sawdust into the stream, there must have been a continued exercise of the right for the period of 20 years, without any substantial change, and that if there was a material change in the use from the time the mill was changed to a steam mill, whereby the injury to the plaintiff was occasioned, the defense founded upon prescription was not established. The charge was in accordance with the settled law upon the subject. The right acquired by prescription is commensurate with the right enjoyed. The extent of the enjoyment measures the extent of the right. The right is supposed to have had its origin in a grant, and the grant being lost, the user is the only evidence of the right granted, and as the presumption of a grant only exists where there has been an adverse, continuous, and uninterrupted user, according to the nature of the easement claimed, for the period of 20 years, the prescriptive right is confined to the right as exercised for that period of time. The party claiming a prescriptive right can not, within the 20 years, enlarge the use, and at the expiration of that time claim not only the use originally enjoyed, but that use as supplemented and enlarged within the period of prescription.

In *Kraver et al. v. Smith* (164 Ky. 674), at page 685, it was said:

Proof was introduced by the appellant, Kraver, which tended to show that the distillery operated by him was located near the creek in 1880, and that its

slops had been continuously discharged into the creek up to August, 1912, but the proof further shows that the character of the slops which went into the creek previous to the year 1908 or 1909 did not pollute the waters nor create a nuisance, and it was only the character of the slops which had gone from the distillery into the creek since 1908 which polluted the stream and created the nuisance complained of.

It has been held that one creating a nuisance is liable to anyone who is injured by it, but one merely continuing a nuisance as the purchaser of property which is a nuisance is not liable until he is requested to abate it. (*Ray v. Sellars*, 1 Duvall 256; *West v. L. & N. R. R.*, 8 Bush. 406.) The proof, however, showed that Kraver created this nuisance or assisted to create it within five years before the bringing of the suits by discharging into the creek a different kind of slop, with other ingredients, than that used theretofore, and besides had been sued for the same character of injuries before the bringing of these suits, and hence could not claim to be a mere continuer of a nuisance.

Other cases in support of the above holding are:

Buxendale v. McMurray, L. R. 2, ch. 790; decided 1867. *Beasley v. Shaw*, 6 East. 207; decided 1805. *Snow v. Parsons*, 28 Vt. 450; decided 1856. *Merrifield v. Lombard*, 13 Allen (95 Mass.), 16.

In the case of *Attorney General v. City of Grand Rapids* it was said:

The doctrine of prescriptive right does not apply here for two reasons: First, there can be no prescriptive right to create a public nuisance; and, second, there has been a great increase of the discharge of sewage into the river within the 15 years before the bill was filed. (30 Am. & Eng. Ency. of Law (2d ed.), 383.)

In *Goldsmid v. Tunbridge Wells Imp. Co.* (L. R. 1, ch. 349) the pollution of a stream by the discharge of sewage from a town therein which was complained of had been going on for over 20 years, and was continuous, and was sought to be maintained on the ground of prescriptive right. It was held, however, that such prescriptive right had not been acquired, because during the early period the discharge of the sewage did not prejudicially affect the lower riparian owners on account of the small amount discharged, and became prejudicial only when, from the increase in the size of the town, a greater amount was discharged.

The prescriptive right to pollute the water is limited to the use which has been made of it, and, in case new use is attempted which renders the stream much more foul, the lower proprietor may recover for the injury done him. (*Moore v. Webb*, 1 C. B. (N. S.) 673.) * * *

If a prescriptive right has been acquired to pollute the water to some extent, the one having the right will not be permitted to increase the pollution without being liable to an action. (*McIntyre v. McGavin* (1893) A. C. 268.)

A RIGHT TO CREATE A PUBLIC NUISANCE CAN NOT BE ACQUIRED EVEN BY PRESCRIPTION.

In *Nolan v. New Britain* (69 Conn. 668), decided 1891, the defendant city set up the defense of a right by prescription to pollute the stream known as Pipers Brook, which flowed through the plaintiff's premises, the court said:

The sixth defense presents the question of prescription. We have already indicated our opinion that the use of Pipers Brook, of which the plaintiff complains, is a public nuisance. We suppose the law to be so that a public nuisance can not be prescribed for. No length of time can legitimate, or enable a party to prescribe for, a public nuisance. (*People v. Cunningham*, 1 Denio, 524; *Mills v. Hall*, 9 Wend. 315; *Venzle v. Dwinel*, 50 Me. 470, 490; *Commonwealth v. Upton*, 6 Gray, 471, 476; *Wood on Nuisances*, 722; 19 Amer. & Eng. Ency. of Law, 39.) When an action is brought by a party who has suffered a special injury in consequence of a public nuisance, a prescriptive right to do the acts complained of can not be maintained against him. (*Bowen v. Wendt*, 103 Cal. 236; *People v. Gold Run, etc., Mining Co.*, 66 Cal. 138; *Boston Rolling Mills v. Cambridge*, 117 Mass. 396; *O'Brien v. St. Paul*, 18 Minn. 176; *Cooley on Torts*, 614.)

In *Kraver v. Smith* (164 Ky. 674), at page 684, it was said:

The claim of a prescriptive right on the part of the appellants to run their sewage into the creek, and for that reason they were not liable in damages for a nuisance created by it, was not allowed by the trial court, and properly so, because there was no evidence offered upon which to base such a claim. The city, upon its part, offered no evidence upon that subject at all, and, if it had, it could not have been allowed as a defense, because, while the owners of the lands adjacent to the creek would have no right at any time to complain of the discharge from the city into the creek of the surface waters, which would naturally find an outlet into the creek, neither the city nor could Kraver claim to have a prescriptive right to turn the filth of the sewers, human excrement, slops, and other poisonous things into the stream. (*City of Henderson v. Robinson*, 152 Ky. 245.) * * *

In 29 Cyc. 1207, the doctrine is thus stated: "There is no such thing as a prescriptive right to maintain a public nuisance, and hence prescription is no defense to a proceeding to abate a nuisance, either by public authorities or by a private individual for damages for the injury which he has received, or to an indictment against the person maintaining the nuisance."

And in the case of *Attorney General v. City of Grand Rapids* it was said:

* * * There can be no prescriptive right to pollute a stream by the discharge of sewage in such a manner and to such an extent as to be injurious to public health. Even assuming that a prescriptive right to foul a stream with sewage can be acquired, such must be restricted to the limits of it when the period of prescription commenced; and if the pollution be substantially increased, whether gradually or suddenly, the court will interfere by injunction to prevent the wrongful excess; and, if it be impossible to separate the illegal excess from the legal user, the wrongdoer must bear the consequences of any restrictions necessary to prevent the excess, even if it unavoidably extends to the total prohibition of the user. (*Blackburne v. Somers*, L. R. Ir. 5 Eq. 1.) * * *

No person is entitled on the ground of ancient custom to the privilege to collect a mass of sewage matter and pour it at one point into a stream in such a quantity that the river can not dilute it on its passage down to the lower riparian proprietors, as the effect of such an act is to create an evil which must be illegal, being such as no custom can authorize. (*Attorney General v. Richmond*, L. R. 2 Eq. 306.)

NOR CAN A RIGHT BY PRESCRIPTION BE ACQUIRED WHICH WILL AUTHORIZE THE DOING OF ANYTHING FORBIDDEN BY STATUTE.

In *Lewis v. Stein* (16 Ala. 24), a statute entitled "An act to incorporate an aqueduct company in the city of Mobile," provided that any person who should obstruct or injure the water of Three Mile Creek by rocks, logs, or other materials between its source and the place where the water is taken for the use of the city, should forfeit the sum of \$20 to be proven by an action of debt.

Defendant had operated a sawmill on the protected portion of this stream for more than 30 years. He was sued under the section for the forfeiture.

The court points out that a number of courts have held that no prescriptive right to create a public nuisance can accrue, but finds it unnecessary to indorse the principle or apply it to this case because of the fact that the act under which the suit was brought was passed only a short time after the mill was erected, and the holding is that—

We then have the clear and unequivocal evidence of the legislative will that no one shall injure the water of this particular stream. In objection to this act prohibiting an injury to the water we can not infer a grant or authority to do so in violation of the act.

BY THE GREAT WEIGHT OF AUTHORITY, MUNICIPALITIES HAVE NO GREATER RIGHTS THAN INDIVIDUALS TO POLLUTE WATERCOURSES AND MUST RESPOND IN DAMAGES FOR ANY INJURY CAUSED TO A LOWER RIPARIAN PROPRIETOR AND MAY BE ENJOINED FROM CONTINUING THE POLLUTION.

The cases are very numerous in which municipalities have been held responsible for injuries caused by the emptying of sewage into streams without purification. Among the most concise and emphatic expressions found in the decisions is one by Mr. Justice Hamersley in the case of *Platt Bros. & Co. v. City of Waterbury* (72 Conn. 531; 48 L. R. A. 691), decided January 4, 1900, where the following language was used:

The right to pour into the river surface drainage does not include the right to mix with that drainage noxious substances in such quantities that the river can not dilute them, nor safely carry them off without injury to the property of others. The latter act is in effect an appropriation of the bed of the river as an open sewer, and the proposition that it may become lawful by reason of necessity is inconsistent with undoubted axioms of jurisprudence. The appropriation of the river to carry such substances to the property of another is an invasion of his right of property. When done for a private purpose, it is an unjustifiable wrong. When done for a public purpose, it may become justifiable, but only upon payment of compensation for the property thus taken. Public necessity may justify the taking, but can not justify the taking without compensation. It may be necessary for a city to thus mix with its drainage such substances, but it is not necessary to pour such mixture into the river without purification. Indeed, the purification is coming to be recognized as a

necessity. But, however great the necessity may be, it can have no effect on the right to compensation for property taken. The mandate of the constitution is intended to express a universally accepted principle of justice, and should receive a construction in accordance with that principle, broad enough to enable the court to protect every person in the rights thus secured by fundamental law.

In the case of *Winchell v. Waukesha* (110 Wis. 101; 83 N. W. 668; 84 Am. St. Rep. 902), which was an action to recover damages and an injunction against the defendant city which was polluting the Fox River to the injury of the plaintiff, causing disagreeable odors to arise therefrom and rendering the water unfit for bathing or for watering stock, the Supreme Court of Wisconsin granted an injunction preventing the city from discharging any sewage into the stream "unless the same shall have first been so deodorized and purified as not to contain foul, offensive, or noxious matter capable of injuring the plaintiff or his property or causing nuisance thereto." In the opinion the court cited with approval language from some of its earlier decisions. The following from *Harper v. Milwaukee* (30 Wis. 365, 372) was quoted:

* * * The general rule of law is that a municipal corporation has no more right to erect and maintain a nuisance than a private individual possesses, and an action may be maintained against such corporation for injuries occasioned by a nuisance for which it is responsible in any case in which, under like circumstances, an action could be maintained against an individual.

And also the following language from *Hughes v. Fond du Lac* (73 Wis. 380, 41 N. W. 407):

A municipal corporation is no more exempt from liability in case it creates a nuisance, either public or private, than an individual.

The case of *Chapman v. City of Rochester* (110 N. Y. 273) is one that has frequently been cited to sustain the liability of the city for injury caused by its sewage. The following is from the opinion of the court in that case:

The plaintiff was the owner and occupant of certain premises, containing more than 4 acres of land in the town of Brighton, adjoining the city of Rochester, and watered by a stream known as Thomas Creek, which, rising in that city and fed by springs of pure water, ran northwardly and across the plaintiff's premises into Irondequoit Bay. He collected its water into an artificial basin, making it serve as well for domestic uses as the propagation of fish, and from it, in due season, he also procured a supply of ice.

The defendant thereafter constructed sewers, and through them discharged not only surface water, but the "sewage from houses and the contents of a large number of water-closets" into Thomas Creek, above the plaintiff's land, with such effect as to render its water unfit for use and cover its banks with filthy and unwholesome sediment. These and other facts well warranted the conclusion of the trial court that the act of the defendant in thus emptying its sewers, constituted an offensive and dangerous nuisance.

Moreover, the plaintiff is found to have sustained a special injury to his health and property from the same cause, and we find no reason to doubt that he is entitled not only to compensation for damages thereby occasioned, but also to such a judgment as will prevent the further perpetration of the wrong complained of. (*Goldsmith v. Commissioners*, 1 Eq. Cas. 161, 1 Ch. App. Cas. 348.)

In view of the principle upon which these and like decisions turn, the objections of the learned counsel for the defendant, against the judgment appealed from, are quite unimportant. The filth of a city does not flow naturally to the lands of the plaintiff, as surface water finds its level, but is carried thither by artificial arrangements prepared by the city and for which it is responsible.

In the case of the *Village of Dwight v. Hays* (150 Ill. 253), decided 1894:

Plaintiff was the owner of a stock farm on a creek below the village of Dwight. The creek was a small one which was dry part of the year. The village proposed to install a sewer system by which all its sewage would flow into the stream a short distance above the plaintiff's property. The village had a population of 1,000. Plaintiff sued to enjoin the installation of this sewer. It appeared that plaintiff was in the habit of cutting ice from this creek and that his stock were watered there.

There was some testimony tending to show that the effect of the sewer would not be to pollute the stream to such an extent as to create a nuisance, but the Supreme Court practically took judicial notice of the fact that the amount of sewage of a village of this size dumped into a small stream would create a nuisance, and expressly stated:

"Little weight is to be given to the testimony of witnesses who attempt to swear contra to known and established natural laws * * *. That such disposition by the village of its sewage will create and constitute a nuisance *per se*, is a proposition too plain for serious consideration."

The court held that it was a proper case for an injunction, and cited, with approval, Gould on Waters, section 546, to the effect:

"The fact that a large population will be affected by the interruption of the system of sewers is immaterial, where the rights of an individual are invaded."

In the case of the *Attorney General v. City of Grand Rapids et al.* (177 Mich. 503, 141 N. W. Rep. 890), the attorney general of Michigan brought suit against the defendant city upon the relation of the township of Wyoming and the village of Grandville, which are situated below the defendant city on Grand River. The suit was for the purpose of enjoining the defendant city from emptying its sewage into the stream. It appeared that the stream was very seriously polluted by the sewage from the city and that it was proposed to increase the amount of sewage by the installation of new sewers by which there would be disposed of sewage from a large area, from which it has been customary to take the sewage out into the country and bury it. Voluminous testimony was taken and the court found the existence of a nuisance as a matter of fact, and held that, the city having created the nuisance to the public, injunction was the proper remedy and the attorney general the proper complainant. The court—

further held that the fact that the city of Grand Rapids is one of considerable size which must in some way dispose of its sewage, gives it no right superior to that of the ordinary riparian owner to the use of the stream.

The opinion of the court concludes:

* * * The maxim, "use your own property in such a manner as not to injure that of another," can equitably be applied to the defendants in this case. It appears undisputed that the construction of a septic tank or tanks by the defendants within a reasonable time is feasible and practicable, and that thereby the sewage would be relieved from contaminating properties and so purified as to take away the offensive, unhealthful, and nauseating odors.

The decree of the court below will be reversed, and one entered here for complainants, restraining the defendant, the city of Grand Rapids, its boards, officials, servants, and agents from continuing to discharge the sewage of the city of Grand Rapids, which is now discharged into the said Grand River, until the same shall have first been, by the use of the septic tank or tanks, so deodorized and purified as not to contain the foul, offensive, or noxious matter (which it now contains) capable of injuring the complainants or their property, or causing a nuisance thereto; such injunction to become operative one year after the date of the settling of decree. The complainants will recover of the defendant, the city of Grand Rapids, their costs of both courts, to be taxed and duly certified.

In *Joplin Consolidated Mining Co. v. City of Joplin* (124 Mo. 129, 27 S. W. 408), it was said:

The proprietor of land through which a stream flows can not insist that the water shall come to him in the natural, pure state. He must submit and that, too, without compensation, to the reasonable use of it by the upper proprietors and he must submit to the natural wash and drainage coming from cities and towns. But a city has no right to gather its sewage together and cast it into a stream so as to injure the lower proprietor. For damages thus sustained the lower proprietor will have an action, and in many instances injunctive relief. (*Locks & Canals v. City of Lowell*, 7 Gray 223; *Hoskell v. City of New Bedford*, 108 Mass. 208; *Von Mills v. Nashua*, 63 N. H. 136; *Chapman v. City of Rochester*, 110 N. Y. 273; 18 N. E. 88, *Lewis Em. Dom. Ser.* 65.)

Cited with approval in *Markwardt v. City of Guthrie* (18 Okla. 37, 39).

Even in Pennsylvania where the right of a mining company to pollute a stream to the extent of destroying practically all of the beneficial uses of a lower riparian proprietor, having a home on the stream and using the same for domestic purposes, was upheld on the grounds that the defendant mining company was making a natural use of the stream and that the industry was an important one to the public, the same court refuses to extend a similar immunity from liability to a city polluting a stream by sewage to such an extent as to destroy the beneficial uses of a lower proprietor. The following is the opinion of the Supreme Court of Pennsylvania:

Little need be said either in explanation or in vindication of the judgment in this case. The plaintiff is the owner of a farm situated 3 miles from Altoona, through which a stream known as Mill Run passes. The bed of the stream is limestone rock, through seams and fissures in which a part of the water finds

a subterranean passage and feeds two springs near the farm buildings, from which water is procured for the stock and for domestic purposes.

The city of Altoona constructed sewers, the contents of which flow into this stream, with the result to the plaintiff that the water of the stream and of the springs is so polluted as to be unfit for any use, and at times when the water overflows the banks of the stream deposits of filth are left on his fields. By digging wells he has been unable to obtain pure water, as on account of the crevices in the rock the whole underground supply is polluted, and he is unable to obtain water for use on his farm, except from a great distance and at great expense.

The assignments of error raise two questions: First, whether there is any liability on the part of the defendant; and, second, whether the recovery, if any can be had, shall be for a permanent injury. These questions were both properly submitted at the trial, and the jury found that the act of the defendant destroyed or seriously impaired a property right which the plaintiff possessed in a stream, and that there was no practicable method by which this injury could in the future be averted, and that it was continuing and permanent.

The fact that the stream has a partially subterranean course does not affect the right of the plaintiff, as the location of the part of the stream below the surface is well defined and easily ascertained.

Pennsylvania Coal Co. v. Sanderson (113 Pa. 326) presented an entirely different question. It was there said: "It will be observed that the defendant has done nothing to change the character of the water or to diminish its purity, save what results from the natural use and enjoyment of their own property. They have brought nothing on to the land artificially. The water as it flowed into Meadow Brook is the water which the mine naturally discharges; its impurities arise from natural and not artificial causes." And the decisions in *Howell v. McCoy* (3 Rawle, 256), *Barclay v. Commonwealth* (25 Pa. 531), and *McCullum v. Germantown Water Co.* (54 Pa. 40), holding that a stream of water may not be fouled by the introduction into it of any foreign substance to the injury of a lower riparian owner, were expressly recognized.

The judgment is affirmed.

The case of *Peterson v. City of Santa Rosa* perhaps goes further than any that has been found in restraining a city from injuring a stream by its sewage. In that case the plaintiff owned a farm below the defendant city on Santa Rosa Creek, into which stream the city discharged sewage. The effect of the sewage was to cause disagreeable odors to arise from the waters at times and to render the water, which had formerly been pure and fit for household purposes and for the watering of stock, impure and unfit for those uses. The suit was for damages and injunction. It was held that the damages caused by the city were unascertainable, because there were other sources of pollution and that it would not be possible to separate the damage caused by the defendant from that caused by others, but nominal damages were granted.

It appeared that after the suit was begun the defendant commenced to install a sewage disposal plant and that the same was in operation before the trial with the result that the sewage, after passing through it—

was clear and inodorous, but the evidence does not show whether or not it was then palatable or fit for use.

The California Supreme Court said:

As will be seen by the finding, the sewage, as treated by defendant, has rendered the water clear and inodorous, but the question as to whether or not it is potable or fit for use remains undetermined for want of evidence upon which to base a deduction.

The previous findings on this question were against the defendant, and, as the burden of showing a change rested upon the defendant, we must presume, in the absence of proof, that the water in the respect indicated has not undergone a change.

The case then stands thus: Plaintiff, as the owner of lands through which the water of Santa Rosa Creek flowed had, and still has, a right of property in the waters of the stream. This right is a corporeal hereditament, appurtenant to the land and running with it. (*Alta Land Co. v. Hancock*, 83 Cal. 219; 20 Am. St. Rep. 217.) Her right as a riparian owner was not only to have the water of the stream flow over her land in its usual volume, but to have it flow in its natural purity, and such pollution of the stream by the defendant as substantially impaired its value for the ordinary purposes of life, and rendered it measurably unfit for domestic purposes, is an actionable nuisance, and the fact that the defendant is a municipal corporation does not enhance its rights or palliate its wrongs in this respect. (*Wood on Nuisances*, sec. 427; *Hugh on Injunctions*, 3d ed., sec. 810.)

We regard the present case as a close one, but under the findings, which are not challenged, we can not interfere with the conclusion reached by the court below.

In *Grey ex rel Simmons v. Paterson*, the attorney general of New Jersey brought suit against the defendant city to enjoin the emptying of its sewage into the Passaic River.

The chancellor found that the sewage created a public nuisance and granted an injunction. Upon appeal the court of errors and appeals held that the city had no right to take without compensation the property right of lower riparian owners on the stream above tide water, to have the waters of the stream come down to them without unreasonable pollution.

But the court, while holding that as a necessary sequence to the establishment of such a right frequently an injunction would be granted, yet held that in view of the fact that the city of Patterson was one of upward of 100,000 inhabitants, and that the lower riparian owners, upon whose behalf the action was brought, had acquiesced in the pollution of the stream by the city, that it would be inequitable to grant an injunction. And the court instructs those upon whose behalf the suit was brought to amend their bill or file a new one asking for an injunction in case the city refuses to make compensation or to sue at law for damages.

It is to be noted that the ground for the denial of equitable relief was not the fact that the sewerage had been constructed under governmental authority.

A MUNICIPALITY IS NOT LIABLE FOR THE POLLUTION OF A STREAM CAUSED BY THE ORDINARY DRAINAGE OF SURFACE WATER.

It has been seen that a municipality has no greater right than an individual to cast polluting matter into a stream. It has also been seen, however, that an individual is not liable for the pollution of a stream caused by the ordinary drainage of surface water from his land. So in the case of the municipality, a distinction is made between the discharge of sewage into a stream and the drainage of surface water from its streets.

This distinction is not an arbitrary one, but has its basis in the essential differences that obtain between the sewage, etc., on the one hand and surface drainage on the other. The rule against liability for the results of surface drainage is really based upon a necessity which obviously does not exist in the case of sewage or factory waste. The latter do not find their way into a stream naturally and necessarily in the same sense that surface water does. Often the polluting substances might be buried, burned, or otherwise disposed of, or so treated as to render them innocuous or harmless.

Thus in the case of the attorney general against the city of Grand Rapids (141 N. W. 890, 175 Mich. 503), where an injunction was sought against the continuance of the discharge of sewage into the Grand River, and also against the installation of additional sewers that would discharge into that stream, it appeared that the new sewers were to be installed for the purpose of disposing of sewage from a considerable territory, and that the practice had been to dispose of the sewage from that territory by carrying it out into the country and burying it. In that case the court also said:

It appears in this case, and it is well known, that modern scientific research has discovered means of disinfecting and deodorizing sewage so that it is practically innocuous.

And the Michigan Supreme Court in granting an injunction permitted the defendant city to maintain the sewers, providing the sewage should be treated by means of septic tanks before being discharged into the stream.

And in the case of *People ex rel. Ricks Water Co. v. Elk River Mill & Lumber Co.* (107 Cal. 221; 40 Pac. 531; 48 Am. St. Rep. 125), decided 1895, where among other allegations it was claimed that the defendant was polluting the stream in question by discharging into it sawdust from its mill. The fact as found by the court was that the bulk of the sawdust from the mill was being burned and carefully handled, and that a very small quantity of it was allowed to escape into the river—not enough to cause any appreciable effect. Relief was denied the complainant in that case. Any number of cases might be mentioned in which the facts disclose an

alternative to the emptying of polluting matter into the stream, where such matter consists of sewage or factory waste, but these are merely cited as illustrative.

Now, on the other hand, there is no such alternative in the case of surface water. Its source is mainly the rainfall of the area which it drains, and without the intervention of any human agency it finds its way by the force of gravity into the stream. Not only is this true, but a further and most important fact is that because of the nature of its origin it does not move with an even flow, but intermittently.

The amount of annual rainfall in most localities varies greatly and never can be estimated in advance—much less can the quantity of rainfall during any given shorter period be estimated—so that whereas sewage and factory waste are both disposed of with something like an even flow, which can be estimated fairly accurately for months in advance, surface drainage is intermittent, and arrangements can not be made in advance for handling it.

In the case of the *Attorney General v. City of Grand Rapids*, as in the *Winchell v. City of Waukesha*, even the investment that would be required to install an adequate disposal plant for the city sewage was established to the satisfaction of the court.

The distinction between sewage and surface water has been abundantly recognized by the courts. In *Chapman v. City of Rochester* (110 N. Y. 273; L. A. R. 296) it was said:

The *slith* of a city does not flow naturally to the lands of the plaintiff, as surface water finds its level, but is carried thither by artificial arrangements prepared by the city and for which it is responsible.

The following opinion written by Mr. Justice Holmes in the case of *John Bainard v. City of Newton* (104 Mass. 255) shows the recognition of the same distinction:

This is a bill in equity to enjoin the city of Newton from discharging sewage into a brook called Cheese Cake Brook, above the plaintiff's land upon the brook, and from emptying more water into it than would flow into it naturally. The master's report shows that the city has constructed a system of surface drainage in some of its streets and ways under the powers relating to the public streets and ways, and that no drainage comes into the brook except what comes from the ordinary wash of these streets and ways. In one place in the watershed west of the brook the surface water gathered into a small stream for some 1,300 feet and then spread over the surface again and disappeared below the plaintiff's land. A "small but substantial" portion of the water from the western watershed, including perhaps a portion of the last-mentioned water, and water from the eastern watershed, which before had not entered the brook, now flows into it through the drains. The increase occurs mainly in heavy rains and sudden thaws, generally does not last many days, and is not found to cause the brook to overflow. The surface drainage into the brook being now from streets, the water is no longer clear, the fish have been driven from it, and at times it has a disagreeable smell, not found to amount to a nuisance.

Upon these facts we are of opinion that the bill must be dismissed. The pollution of the water by the usual impurities from streets is not a cause of action. The use of its land for streets, with the usual consequences to owners lower down upon the stream, would not exceed the common-law rights of an upper owner. (*Wheeler v. Worcester*, 10 Allen (Mass.) 301, 602; *Winfield v. Worcester*, 110 Mass. 216, 226. See *Middlesex Co. v. McCoe*, 140 Mass. 103.) Equally little can the plaintiff complain of the increased discharge of surface water into the stream. We do not say that no change of the watershed on a large scale could give rise to a cause of action on the part of a lower proprietor, but a change which only slightly and occasionally enlarges the flow of a natural stream within its capacity, and does not make it overflow, is not actionable. (*Jackman v. Arlington Mills*, 137 Mass. 277, 283.) Again, so far as appears, all the damage to the plaintiff, if any, was the necessary consequence of the laying out of the streets and ways from which the surface drainage came. If so, and if the statutes impose a greater liability than the common law for this damage, when so caused (*Woodbury v. Beaulieu*, 153 Mass. 245) the only remedy is under the statute. (*Plogg v. Worcester*, 13 Gray, 601, 603; *Wheeler v. Worcester*, 10 Allen, 301, 603; *Collins v. Waltham*, 151 Mass. 195, 198.)

Bill dismissed.

So in *Crane v. Village of Roselle* (236 Ill. 97), decided October 1, 1908, which was a suit for an injunction to prevent the defendant village from proceeding with the construction of a drainage system, the court found there had been no convincing proof that sewage was to be emptied into the drain, and said:

It is clear that the stream in question is the natural outlet for the surface drainage of the village and vicinity. * * * The village owning the dominant heritage in this case had a right to collect its surface waters and have them pass off over the servient heritage belonging to complainant, so long as it did not cast its sewage upon his land and thereby create a nuisance, and it makes no difference whether said surface water be collected by ditches upon the surface or by tile drains underground. (*Robb v. Village of La Grange*, 158 Ill. 21.)

In another Illinois case, that of *Robb v. Village of La Grange* (158 Ill. 21, at p. 27), which was a suit to enjoin the dumping of sewage into a stream flowing through plaintiff's land, the court said:

In this State the same rule is applied to surface water flowing in a regular channel that is applied to a water course. The owner of the dominant heritage or higher tract of land has the right to have the surface water falling or coming naturally upon his premises pass off the same through the natural drains upon and over the lower or servient lands, and the owner of the dominant heritage may by ditches drain his own land into the natural channel, even if the quantity of water thrown upon the servient heritage is thereby increased. (*Peck v. Herrington*, 100 Ill. 611.) Under this rule, adopted in the case cited and in other cases in this court, the village of La Grange, being located on higher lands than the land occupied by complainant, had the undoubted right of drainage of its water in a natural channel over complainant's land into Salt Creek, and had the village confined its drains to carrying off surface water or other waters which proper drainage required in order to improve the streets and render the lots of the village more suitable for building purposes there would be no ground for complaint.

In the case of *Anchor Brewing Co. v. Village of Dobbs Ferry* (84 Hun (N. Y.), 274; 91 Sup. Ct. Rep. 274), decided February, 1895, affirmed on opinion below by court of appeals, June 24, 1898 (156 N. Y. 605), the court said:

The case shows that the increased volume of water, which in time of rainfall is now cast upon the plaintiff's property, is the result of the growth of population in the village and the consequent grading of streets, erection of buildings, and improvement of private grounds. In its natural condition much of the water that fell upon the land was absorbed by the soil and evaporated by the atmosphere, and a part only reached the foot of the watershed. But graded streets, paved gutters, and flagged walks prevent its absorption by the ground, and in increased quantities it flows in its natural course to the river.

For this result, however detrimental and injurious it may be to the plaintiff's property, we are of opinion that the defendant is not liable. It can not be compelled to construct drains for the disposal of surface water. (*Mills v. City of Brooklyn*, 32 N. Y. 489; *Hines v. City of Lockport*, 50 N. Y. 236.)

Neither can it be compelled to destroy its streets or move its gutters and paving. What the village did was lawful at the time, and in the absence of any claim that it had exceeded its power or performed the work in a negligent manner, it is not legally responsible for the consequential injury to adjacent property.

Wheeler v. City of Worcester (10 Allen (Mass.) 591) is a case in which the plaintiff sued for damages to his premises caused by the backing of the drain which led from his buildings to a brook, which brook flowed through the defendant city above the plaintiff's premises. It was alleged that one of the causes that contributed to the backing up of the drain was that the surface wash from the streets of Worcester had greatly increased and that large quantities of soil, etc., had been carried into the stream and filled up the bed. Upon this branch of the case the court said:

The surface wash from the streets. This is stated (in the findings of auditors to whom the case had been referred) to be incidental to the growth of the city and the construction of the streets. It finds its way naturally into Mill Brook, which furnishes the only channel for the accumulated surface water of the vicinity. No new watercourse has been diverted into it. It receives no more water than would be collected from the natural surface of the land, but, by the changes of uses to which a dense population has appropriated it, the soil of the numerous streets has been carried into the stream. To hold the defendants liable to an action from such cause would be to say that the owner of land must be restricted to such uses of it as will not, by the ordinary action of the elements, cause the soil to wash in and fill to any increased extent the adjacent brooks and streams. The injury which results to the plaintiff from this cause must be regarded as *damnum absque injuria*. * * *

BUT WHERE A CITY ALTERS THE NATURAL COURSE OF DRAINAGE AND CAUSES MATERIAL INCREASE IN THE QUANTITY OF THE FLOW IN A GIVEN DIRECTION, AND MATERIAL INJURY RESULTS, THE CITY IS LIABLE FOR THE INJURY.

In *Daley v. Watertown* (102 Mass. 116), decided May 17, 1906, defendant city, acting under an order of the county commissioners,

widened a street known as Belmont Street, and changed the direction of the flow of surface water over a part of the land which was added to the street. For some years prior to this the city had maintained a large pipe drain connecting with an open ditch running from Belmont Street, through the land of one Joshua Coolidge, into Puffers Pond, a small pond with no outlet, and upon widening the street the city obtained from Coolidge a written license to continue the use of this drain and, if necessary, to construct a new one over his land to conduct the water to Puffers Pond. The natural drainage of the land added to Belmont Street was in another direction, into a larger pond, called Birds Pond.

Plaintiff owned a house and lot in Watertown, across a private way from Puffers Pond. The pond overflowed and submerged a large part of plaintiff's lot and filled his cellar to a depth of 3 or 4 feet with filthy water. He sued for damages. The court said:

The evidence well warranted a finding that the overflow of water from Puffers Pond caused a nuisance to the damage of the plaintiff and other property owners, and that this was chiefly due to the inflow of water through the drain and ditch which the defendant town maintained. The evidence plainly shows that the responsibility for the construction and maintenance of this drain was upon the town, through the selectmen acting as its agents, and not upon the superintendent of streets as a public officer.

The remaining question is whether the construction of the drain was in violation of private rights. The right of the town to construct the way under the order of the commissioners could give it no right to lay a drain or dig a ditch through the land of a private owner for the purpose of conducting water and discharging it there. (*Franklin v. Fisk*, 13 Allen, 211.) No one under the highway act could have an assessment of damages for the probable consequences of such a trespass, for the trespass could not be anticipated, and it would not be a natural and legitimate consequence of the laying out of the street. The only right of the town to maintain the drain in Coolidge's land was obtained through its license, but Coolidge could give the town no greater rights than he had himself. He had no right as a landowner to take surface water which naturally would drain in another direction, and which had been collected and brought to catch basins near his land, in a large quantity, and to carry it down into the pond in a stream in such quantity as to make the pond overflow and cause a nuisance to other landowners in the vicinity. The evidence tended to show a material change in the condition of the pond by discharging water into it which ought to have gone elsewhere.

It is true that cities and towns in the construction of streets, like private owners on their own lands, may deal with surface water in a reasonable way. They may erect barriers to prevent it from coming upon the street from adjacent lands. They may turn it from the streets upon abutting lands, if they do it in such a way as to cause no unreasonable damage.

In the present case there was something more than an ordinary disposition of surface water. The jury might find that there was an unnecessary and unreasonable change in the course of surface water, to which the contour of the land was not adapted, so as to bring it down in large quantities to a place from which it could not escape, and where its presence would be likely to create a nuisance.

But the mere fact that surface water has been diverted will not render a city liable to an injunction. Relief will not be given unless there is also material injury to the lower proprietor.

In *Thomas v. City of Grinnell* (133 N. W. 91), decided June 21, 1915, the plaintiff sued to enjoin the installation of a new sewer system by the defendant city and a part of the basis of the complaint was that the city proposed by the new sewers to conduct surface water from a large area into the stream, known as Sugar Creek, which flowed through the plaintiff's premises, instead of allowing the surface water from this area to flow as it naturally would and formerly did into another stream known as Little Bear Creek.

The Supreme Court of Iowa denied the plaintiff relief and said:

* * * An examination of this record convinces us that plaintiff fails to show with any reasonable certainty that the drainage from the city which is merely an incident to the construction of a sewer system constructed for an altogether different purpose will increase the flow of Sugar Creek in a manner to materially injure the lower riparian proprietors. The preponderance of evidence given by engineers and experts who have examined the premises and computed both the probable flow and the capacity of the creek is to the effect that such increase will not swell the volume of water to an extent liable to injure adjacent lands. It is unnecessary to go into recitation of the figures and estimates given by the engineers and others. It is enough to say that the showing of anticipated injury is not so clear or certain that we can interfere in advance and place our veto upon a proposed municipal improvement which may be of great, if not vital, importance to the convenience, comfort, and health of a large community which is willing to assume the burden of its construction and maintenance and to guard its operation in a manner to prevent its becoming a nuisance to others. Men of great learning and wide experience who have familiarized themselves with the subject express the view that the incidental drainage of surface and percolating waters will not be enough to create a burden upon the plaintiff or his property. Manifestly any estimate which can be made of the amount is largely speculative and affords a very unsubstantial basis on which to nullify the act of a city acting within the scope of its express statutory authority.

And in distinguishing earlier Iowa cases, the court stated that they had held not "that the diversion of water from its natural flow upon or away from the land of another is actionable and still less that equity will always interfere to prevent such diversion," but that the city will not be permitted to divert the water "to the substantial injury of the lower proprietor," and that no technical invasion of one's premises or a merely nominal injury is sufficient ground to constitute a cause of action, and the court cited *Livingston v. McDonald* (21 Iowa 160, 89 Am. Dec. 574; *Obe v. Pattat*, 151 Iowa 723, 130 N. W. 903; and also *Martin v. Schwertley*, 155 Iowa 351, 136 N. W. 218, 40 L. R. A. (N. S.) 60).

NOR WILL A CITY BE PERMITTED TO BUILD ARTIFICIAL DRAINS AND THEREBY CONDUCT SURFACE WATER INTO A STREAM IN SUCH QUANTITIES AS TO EXCEED THE CAPACITY OF THE STREAM AND CAUSE THE SAME TO OVERFLOW TO THE INJURY OF A LOWER PROPRIETOR.

In *Noonan v. City of Albany* (79 N. Y. 470) the plaintiff sued the defendant for damages to his premises in the city of Albany, caused by water, dirt, and filth thrown and deposited thereon by defendant.

The defendant by means of the Lark Street and connecting sewers and the manner of grading Colonie Street, concentrated the surface water and sewage of a large territory and discharged it in one body at the junction of Lark and Colonie Streets into a ravine. It passed after its discharge over ground used as a dumping place for refuse, and down the declivity until it reached the valley or bed of the ravine, and flowing easterly reached the premises of the plaintiff and having no sufficient outlet, flooded the plaintiff's lot and deposited thereon the filth carried by the sewers and the sand and dirt washed down by the water as it passed over the dumping ground. This *prima facie* established a right of action in the plaintiff. A municipal corporation has no greater right than an individual to collect the surface water from its lands or streets into an artificial channel and discharge it upon the lands of another, nor has it any immunity from legal responsibility for creating or maintaining a nuisance.

One contention of the defendant city was "that it had a legal right to drain into a stream which flowed through the bed of the ravine across the plaintiff's land without responsibility for consequential injuries resulting to the plaintiff from such drainage, and that the water and sewage which flooded the plaintiff's land were discharged into this stream." As to this contention the court said:

The right of a riparian owner to drain the surface water on his lands into a stream which flows through them, and which is the natural outlet, is an incident to his right as riparian owner to the reasonable use of the stream. But this right is not, we conceive, an absolute right under all circumstances, irrespective of the size of the stream, or the natural purpose which it subserves, to throw into it surface water by means of ditches or drains, when by so doing it will be filled beyond its natural capacity and overflow and flood the lands of a lower proprietor. The stream into which the sewage and water collected by the defendant found its way was a mere rivulet of water, the outlet of springs at the head of the ravine. It may also, before the sewers were built on Colonie Street was graded, have received a portion of the surface water from the territory drained thereby. But at that time the surface water had no defined channel. It was subject to be disposed of by the ordinary processes of nature. Absorption and evaporation would diminish the amount which otherwise might have found its way to the valley, and the discharge into the stream of the portion not otherwise disposed of would naturally be gradual and reach it at different points in its course. It does not appear that the city owned any of the land between the sewer and the watercourse, but it had with the consent of the property owners changed the watercourse from its natural condition and constructed a box drain 2 or 3 feet square in its place. In view of the character and capacity of this watercourse, it can not, we think, be held as matter of law that there was the right in the city to discharge

into the stream the water from Colonie Street and from the Lark Street sewer, although by so doing it would flood the premises of the plaintiff. It follows that the first request to charge was properly refused. The request assumes that the city, using reasonable care, had the absolute right to drain into the watercourse in question, irrespective of the capacity of the stream or the amount of water discharged into it, and the court was requested to instruct the jury that it was not liable "for any damage caused by any increase in the amount of water thrown into the stream by such drainage."

AT COMMON LAW A CITY SEEKING TO MAINTAIN THE PURITY OF A STREAM, AS A LOWER RIPARIAN PROPRIETOR, HAS NO GREATER RIGHT THAN AN INDIVIDUAL TO LIMIT THE USE OF THE STREAM BY UPPER PROPRIETORS.

Such was the holding of the Michigan Supreme Court in the case of *People v. Hulbert* (131 Mich. 156, 64 L. R. A. 265). In that case, the city of Battle Creek, for the purpose of obtaining a water supply, purchased a piece of land along the shore of Goguac Lake, which was situated near the city, and most of the shore of which was occupied by farmers, pleasure-resort proprietors, and summer cottages. The respondent had occupied a cottage on the shore for several summers and had been in the habit of bathing in the lake.

After the purchase of the shore property by the city and the installation of a pumping station to pump water for its water supply, the city, for the purpose of making a test case, had the respondent arrested for swimming in the lake. No statute is mentioned in the opinion as having been violated. Apparently the case against respondent was upon the theory that because the city had commenced to utilize the Goguac Lake as a water supply it thereby became a nuisance to swim in the lake. While there was expert testimony to the effect that germs might be thrown off from the body of respondent while swimming and might reach those consuming the water and result in ill health, there was no claim that any such result had in fact occurred.

The opinion of the court expressly states that the city of Battle Creek had under its charter "ample power to condemn lands and easements for a water supply upon paying due compensation for the rights taken."

The court said:

The first question calling for consideration is: Was the act of respondent unlawful? It is a matter of common knowledge that in this State the riparian owners whose lands border upon lakes and through whose lands streams run are in the habit of using the streams and lakes by allowing their domestic animals to drink therein and by drawing therefrom what water may be needed for domestic purposes; and themselves and their families resort to the water of the streams and lakes for the purpose of bathing at suitable seasons of the year. It is also known that, as a rule, the supply of cooking and drinking water is obtained from springs or wells. Will the fact that a lower

riparian proprietor decides to use the water of the stream or lake for drinking and cooking purposes make a reasonable use of the water by the upper riparian owners for the purposes of watering cattle and bathing purposes unlawful, because to do so has a tendency to make the water less desirable for drinking and cooking purposes? Can the upper proprietors be deprived of such reasonable and ordinary use when the lower proprietor is a city having a large population by invoking the police power, and without compensation? It will readily be seen these are very important questions. The diligence of able counsel has failed to call our attention to a case on all fours with the one at bar, but the principles involved are not new.

Copious quotations are then made from a number of cases in which the general principles relating to pollution of waters are laid down. The opinion then proceeds:

It is very clear from these cases that the lower proprietor has no superior right to the upper one, and may not say to him that, because the lower proprietor wants to use the water for drinking purposes only, the upper proprietor may not use the water for any other purpose. Each proprietor has an equal right to the use of the stream for the ordinary purposes of the house and farm, even though such use may in some degree lessen the volume of the stream or affect the purity of the water. (*Hazeltine v. Case*, 46 Wis. 391, 32 Am. Rep. 715, 1 N. W. 60; *Ulbricht v. Eufaula Water Co.*, 80 Ala. 587, 4 L. R. A. 572, 11 Am. St. Rep. 72, 6 So. 78; *Lewis Em. Dom.*, sec. 65.) This right is not affected by the fact that the lower proprietor is a municipality instead of an individual. (*Smith v. Rochester*, 92 N. Y. 463, 44 Am. Rep. 393; *Haupt's Appeal*, 125 Pa. 211, 3 L. R. A. 536, 17 Atl. 436.) It is not believed a case can be found where, out of deference to the rights of the lower riparian proprietor, it is made unlawful for the upper proprietor to make such reasonable and ordinary use of the water passing over his land as was made by the respondent in this case.

It is insisted by the people that under police power, it was competent to forbid any act on the part of the upper proprietor that would tend to impair the public health. It may be conceded that the police power of the State is very broad, but our attention has not been called to any principle of law or to any case the practical application of which will enable a village, city, or other municipality, for the purpose of obtaining a water supply, to prevent the ordinary and reasonable use of the waters of an inland lake or stream by an upper riparian proprietor, without the exercise of the right of eminent domain or without compensation.

In what we have said we do not mean to intimate that an upper proprietor may convert his property into a summer resort and invite large numbers of people to his premises for the purposes of bathing, and give them the right possessed only by the riparian owner and his family. We are undertaking to decide only the case which is presented here. Upon the record as made, we think the court should have directed a verdict in favor of respondent.

The conviction is reversed and a new trial ordered.

It would appear that the view of the Michigan Supreme Court was that what the city was really seeking to accomplish was the acquisition of a property right and that this could only be acquired by it by the exercise of its power to eminent domain.

In the case of *Helfrich v. Catonsville Water Co.* (74 Md. 269; 13 L. R. A. 109), an action was brought by a private water company to enjoin the defendant, Helfrich, from permitting his cattle to have access to a stream above the plaintiff's source of supply.

The Maryland Supreme Court, in denying the relief upon the ground that Helfrich was only making a reasonable use of the stream, pointed out:

The water company has power, under its charter, to acquire the water right by making due compensation to the owner, and not otherwise.

While the complainant in this case was not a municipality, it would seem that the same rule should be applied and that if it is proper to require compensation to be made for taking of property rights by water company, there can be no sound reason why a municipality ought not to be required to make similar compensation.

What is here said, of course, relates only to the rights of municipalities at common law. The right of the State to confer additional authority upon municipalities will be discussed later.

II. DIGEST OF JUDICIAL DECISIONS RELATING TO STATUTES.

INTRODUCTION.

The rights and remedies which have been considered thus far are only those given by the common law.

Riparian rights have, however, been altered in varying degrees by statutes enacted in the several States, and within recent years there has been a great deal of activity in many of the States in enacting laws affecting stream pollution. A number of causes have operated to bring to the attention of the various States the importance to the public of the best use being made of the stream. On the one hand, the vast increase of population, particularly in urban centers, has brought with it the problem of disposing of the greatly increased quantity of sewage. On the other hand, the tendency of the increased quantity of sewage and the increased quantity of factory waste to pollute the streams to such a degree as to destroy fish life, to render the water unfit for domestic use and to greatly curtail the quantity of available water for the public, has required that some limitation be placed upon the character and quantity of sewage and waste permitted to enter the streams.

Again the science of medicine has, within recent years, disclosed dangers to the public from the use of polluted waters, which were before unknown.

On the other hand, the purification and rendering innocuous of both sewage and factory wastes have received a vast amount of investigation and research by eminent scientists within recent years, and it has been found practicable to prevent at least a very large part of the injury to streams which had previously been considered inevitable.

It will be seen then that the State has, like the individual riparian proprietor, a dual interest in the stream, or rather the duty of protecting a dual interest of the public. On the one hand, the sewage and drainage of cities must be disposed of for the protection of the health of the community and the logical and convenient outlets are the streams. On the other hand, and also from the standpoint of health, the public water supplies must be protected and nuisances prevented.

The question naturally arises as to whether a State has the power to enact such legislation as it pleases controlling the waters within its borders. It is apparent that the dual interest of the public must inevitably lead the State to enact legislation along two different and somewhat conflicting lines, and it will be found that the power of the State is more limited in the one kind of legislation than in the other.

TO PROTECT ITS STREAMS AGAINST POLLUTION, A STATE MAY, WITHOUT PROVIDING COMPENSATION, CURTAIL THE RIGHTS OF THE RIPARIAN OWNER IN HIS USE OF THE STREAM, ACCORDING TO THE WEIGHT OF AUTHORITY.

In the case of *State against Griffin* (69 N. H. 1), a State statute had been passed which prohibited the depositing of sawdust in the tributaries of Massabesic Lake, which lake was the source of a water supply of the city of Manchester. The defendant was a lessee of property on Sucker Brook, a tributary of the lake. There was a sawmill on the property, and the defendant discharged sawdust into the brook therefrom, which had the effect of imparting a woody taste to the water and to discolor it and to render it unwholesome near the mill. Other sawmills discharged sawdust into the same stream, and near the mills the water was unwholesome; but at the point where the city's supply was taken from the lake the effect of the sawdust could not be detected except by chemical analysis.

The defendant contended that the act was unconstitutional because it deprived him of his property without compensation.

The Supreme Court of New Hampshire held that the statute did not involve a taking of the property of the defendant without compensation, but that it was a valid exercise of the police power of the State. The court quoted at great length from the case of *Commonwealth v. Alger* (7 Cush. 53, 84-86) as to the nature and extent of the police power of the State. A part of that language is as follows:

* * * All property in this Commonwealth is derived directly or indirectly from the Government and held subject to those general regulations which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient. This is very different from the right of eminent domain—the right of a government to take and appropriate private property to public use whenever the public exigency requires it, which can be done only on condition of providing a reasonable compensation therefor. The power we allude to is rather the police power—the power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or

without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the Commonwealth and of the subjects of the same. It is much easier to perceive and realize the existence and sources of this power than to mark its boundaries or prescribe limits to its exercise. There are many cases in which such a power is exercised by all well-ordered governments and where its fitness is so obvious that all well-regulated minds will regard it as reasonable. Such are the laws to prohibit the use of warehouses for the storage of gunpowder near habitations or highways; to restrain the height to which wooden buildings may be erected in populous neighborhoods, and require them to be covered with slate and other incombustible material; to prohibit buildings from being used for hospitals for contagious diseases or for carrying on of noxious or offensive trades; to prohibit the raising of a dam and causing stagnant water to spread over meadows near inhabited villages, thereby raising noxious exhalations injurious to health and dangerous to life. Nor does the prohibition of the noxious use of property—a prohibition imposed because such use would be injurious to the public—although it may diminish the profits of the owner, make it an appropriation to a public use so as to entitle the owner to compensation. If the owner of a vacant lot in the midst of a city could erect thereon a great wooden building and cover it with shingles, he might obtain a larger profit of his land than if obliged to build with stone or brick with a slated roof. If the owner of a warehouse in a cluster of other buildings could store quantities of gunpowder in it for himself and others, he might be saved the great expense of transportation. If a landlord could let his building for a smallpox hospital or a slaughterhouse, he might obtain an increased rent. But he is restrained—not because the public may have occasion to make the like use or to make any use from it, but because it would be a noxious use, contrary to the maxim, *Sic utere tuo ut alienum non laedas*. It is not an appropriation of the property to a public use but the restraint of an injurious private use by the owner, and is therefore not within the principle of property taken under the right of eminent domain.

And the New Hampshire Supreme Court said:

The universal doctrine on the subject is nowhere more clearly stated than in the foregoing language of Chief Justice Shaw.

In the case of *Henry H. Sprague and others v. James Dorr* (183 Mass. 10), decided January 7, 1901, the Massachusetts Supreme Court, speaking of the right to make "rules and regulations for the sanitary protection of all waters used by the metropolitan water board for the water supply of any city, town, or water company," etc., said:

* * * That the exercise of such authority by the legislature is within the police power as it is generally defined by the courts, and within the particular provisions of chapter 1, section 1, article 4, of the constitution of Massachusetts, is too plain for discussion. It may involve a regulation and modification of a use of streams which otherwise might be made under the common-law rights of riparian proprietors. These rights include every reasonable kind of use of the water as it passes by, having a proper regard for the rights of other proprietors on the stream below. It has often been said that riparian proprietors have no right to pollute the waters of a stream. In thinly settled and remote regions, upon streams whose waters are not appropriated to domestic use, impurities may sometimes be discharged into the water without interfering with any use of it that riparian proprietors desire to make; but when the

water is to be used for drinking, as the waters of most streams may be used and of many streams are in fact used, the uses of riparian proprietors must be limited with a strict regard to cleanliness and sanitation. Hence statutes special and general have been passed from time to time, touching this subject. (St. 1878, c. 183; It. L., c. 75, sec. 124.) These laws, so far as they merely prevent the discharge into streams of polluting matter of such kind and amount as will corrupt or impair the quality of the water, are a reasonable regulation of the exercise of private rights of property in reference to the common good, and they are not an interference with property that calls for compensation to the owners.

In *Lewis v. Stein* (16 Ala. 24) a statute provided that any person obstructing or injuring the waters of Threemile Creek by rocks, logs, or other materials between its source and the place where the water was taken for the use of the city of Mobile should forfeit the sum of \$20, to be proven by an action of debt. Proceedings against the defendant were had under the statute upon the ground that defendant was injuring the waters through his operation of a saw-mill. A statute was passed a short time after the mill was erected, but the action was not begun until some 30 years thereafter.

While a physician testified that the sawdust would not render the water less healthful, the court found that the existence of such a substance in the water was injurious to it.

To say the least (said the court) it renders the water less pure and is calculated to annoy and disgust those who have to use it for the ordinary purposes of life, and consequently must be an injury to it.

The defendant contended that the effect of the proceeding would be to deprive him of his property for the public good without compensation, because he would have to abandon the use of his mill if he were not permitted to discharge sawdust into the stream, but the court held that while he had a right as a riparian proprietor to use the water, he had no right "to abuse it to the injury of another. By his acts he not only used it, but, as the evidence shows, injured others."

So in *State v. Wheeler* (44 N. J. L. 88) the court upheld the constitutionality of an act entitled "An act to prevent the willful pollution of the waters of any of the creeks, ponds, or brooks of the State." The defendant had been convicted, and contended that unless the act were so construed as to apply only to acts calculated to render water, as supplied to reservoirs, impure or offensive, it would deprive an owner of property of its use without compensation and so be unconstitutional. The court said:

The whole act plainly shows a design to protect from pollution the waters of creeks, etc., used as the feeders of reservoirs for public use, without any reference to whether such pollution in fact appreciably affects the water when arrived at the reservoir.

Nor does such a construction render this act objectionable. The design of the act is not to take property for public use, nor does it do so within the meaning of the Constitution. It is intended to restrain and regulate the use of private property so as to protect the common right of all the citizens of the State. Such acts are plainly within the police power of the legislature, which power is the mere application to the whole community of the maxim "*Sic utere tuo, ut alienum non laedas*." Nor does such a restraint, although it may interfere with the profitable use of property by its owner, make it an appropriation to a public use so as to entitle him to compensation. (Citing *Comm. v. Alger*, 9 Cush. 53; *Comm. v. Tewksbury*, 11 Mete. 55, and other cases.)

* * *

Nor is there anything to render such legislation objectionable because in some instances it may restrain the profitable use of private property where such use in fact does not directly injure the public in comfort and health; for to limit such legislation to cases where actual injury has occurred would be to deprive it of its most effective force. Its design is preventive, and to be effective it must be able to restrain acts which tend to produce public injury. Many instances of the exercise of such power may be found [citing instances] * * *. The object of this legislation is to protect the public comfort and health. For that purpose the legislature may restrain any use of private property which tends to the injury of those public interests. That the pollution of the courses of the public water supply does so tend no one can deny.

So in the case of *City of Durham v. Eno Cotton Mills* (141 N. C. 615, 54 S. E. 453, 7 L. R. A. (N. S.) 321) a statute forbade any person or municipality to "discharge sewage into any drain, brook, creek, or river from which a public drinking-water supply is taken," unless subjected to a purification process, approved by the board of health, and providing that such discharge might be enjoined. The defendant company was sued by the city of Durham and the water company for an injunction to prevent the discharge by the defendant of sewage from its mill into the river at a point some 17 miles above the intake of the water company. The defendant contended that the act was unconstitutional and void and that its enforcement in the present instance would involve the taking of its property without compensation and would amount to confiscation. But the court said:

It will be observed by reading the act that it is not required that the sewage discharged into the stream should injuriously affect the water at the intake; it is quite sufficient if it pollutes the river at the sewer's outlet. The legislature has decided that it is desirable to preserve our natural streams in at least their present state of purity, and where they have been polluted to remove the cause as speedily and effectually as possible. It has therefore said that no person shall deteriorate the water at all by sending sewage into a natural stream until it has been purified and made wholesome, or until all the noxious matter in it has been eliminated. All this means, of course, that the water shall not be poisoned by sewage at the outfall. We must assume that the defilement of the water is an injury which is forbidden by the legislature for perfectly good and sufficient reasons. It is not for us to question the policy or expediency of such an enactment. In this respect the legislature has a large discretion, to be exercised in such way as will, in its judgment, promote the interests and advance the welfare of the people, and it has this discretion to such an extent

as to be virtually a law unto itself so far as the manner of its exercise is concerned. Such legislation is not intended merely to abate an existing nuisance, but to prevent that being done which is a menace to the public health, and which it is supposed may become a deadly peril and a public nuisance because fatal in its consequences. It is not, therefore, a void law because it is founded upon a mere apprehension of evil, but is a precautionary measure which is clearly within the police power of the State and to be adopted when deemed necessary to secure the public health.

And in the recent case of *Ohio State Board of Health et al. v. The City of Greenville et al.* (Ohio St. 1, 98 N. E. 1019; Ann. Cas. 1913 D, p. 52), in discussing the validity of the statute relating to the purification of sewage discharged into streams, etc., the court said:

* * * This particular legislation now under consideration is designed to preserve and protect the public health and comfort, and therefore falls directly within the police power of the State. This power includes anything which is reasonable and necessary to secure the peace, safety, health, morals, and best interests of the public. It is now the settled law that the legislature of the State possesses plenary power to deal with these subjects so long as it does not contravene the Constitution of the United States or infringe upon any right granted or secured thereby, or is not in direct conflict with any of the provisions of the constitution of this State, and is not exercised in such an arbitrary and oppressive manner as to justify the interference of the courts to prevent wrong and oppression. The right of a court to interfere with the legislature of a State in the exercise of police power is very clearly expressed by Mr. Justice Harlan in the case of *Jacobson v. Massachusetts* (197 U. S. 11): "If there is any such power in the Judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no real or substantial relation to those objects, or is beyond all question a plain, palpable invasion of rights secured by the fundamental law; it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." This doctrine has also been declared in the case of *Mugler v. Kansas* (123 U. S. 623; *Minnesota v. Barber*, 136 U. S. 313, 320; *Atkin v. Kansas*, 101 U. S. 207, 223). The possession and enjoyment of all rights guaranteed to the citizen under the Constitution of the United States and the State of Ohio are subject to such reasonable conditions as may be deemed by the governing authority of the State essential to the safety, health, peace, good order, and morals of the community. It is said by Mr. Justice Field in the case of *Crowley v. Christensen* (137 U. S. 86) that "Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others." In the case of *Holden v. Hardy* (140 U. S. 306) it was held that "It is as much for the interest of the State that the public health should be preserved as that life should be made secure. With this end in view quarantine laws have been enacted in most, if not all, of the States; insane asylums, public hospitals and institutions for the care and education of the blind established, and special measures taken for the exclusion of infected cattle, rags, and decayed fruit. In other States laws have been enacted limiting the hours during which women and children shall be employed in factories, and while their constitutionality, at least as applied to women, has been doubted in some of the States, they have been generally upheld."

In this State the authority of the general assembly to exercise the police power of the State is no longer an open question. It has been settled by numerous adjudications that such power may be exercised by the general assembly of the State according to their judgment and discretion in any manner not inconsistent with or repugnant to provisions of the State or Federal Constitutions. (Commissioners of Champaign County v. Church, administrator, 62 Ohio St. 344; Cincinnati, Sandusky & Cleveland Rd. Co. v. Cook, 37 Ohio St. 263; C. H. & D. Rd. Co. v. Sullivan, 32 Ohio St. 152; L., S. & M. R. Ry. Co. v. C., S. & C. Ry. Co., 30 Ohio St. 604; C. H. & D. Ry. Co. v. City of Troy, 68 Ohio St. 510.)

It is true that the mere assertion by the legislature that a statute relates to the public health, safety, or welfare does not bring that statute within the police power of a State. It must appear from the statute itself that its real intent and purpose is the conservation and preservation of public health, public safety, or public morals, and when this fully and clearly appears, then the doctrine announced in the case of *Jacobson v. Massachusetts* (supra) applies, and a court will then only inquire whether such legislation is "beyond all question a plain palpable invasion of rights secured by the fundamental law." The legislation we are considering admits of no doubt as to the purposes to be subserved thereby. It is clearly an effort on the part of the legislature of the State to preserve and protect the public health and comfort, and the only remaining question for this court is, whether it clearly appears that this legislation is in conflict with organic law. * * *

And in a very important case in Maryland, *Welch v. Cogan* (126 Md. 1), decided April 14, 1915, in which a statute relating to sewage disposal was construed, the court said:

* * * The basis for all legislation of this character is to be found in the police power of the State. While no precise boundaries have ever been set as to what may and what may not be properly classed as an exercise of police power, the protection and preservation of the public health has universally been recognized as one of the primary fields for its exercise, and it needs no citation of authorities for the proposition that in a city or thickly populated community nothing is more vital to the preservation and protection of the public health than the establishment of proper and suitable drainage and sewerage.

In *Boehm v. Baltimore* (61 Md. 303) Judge Miller, speaking for this court, said: "The preservation of the health and safety of the inhabitants is one of the chief purposes of local government."

The same doctrine was even more explicitly stated by the late Judge McSherry, in the case of *State v. Hyman* (98 Md. 613), as follows:

"One of the legitimate and most important functions of civil government is acknowledged to be that of providing for the welfare of the people by making and enforcing laws to promote and preserve the public health, the public morals, and the public safety. Civil society can not exist without such laws, and they are therefore justified by necessity and sanctioned by the right of self-preservation. The power to enact and enforce them is lodged by the people with the government of the State, qualified only by such conditions as to the manner of its exercise as are necessary to secure the individual citizen from unjust and arbitrary interference." And to the same effect was the decision in *Deems v. Baltimore* (80 Md. 173; *Sprigg v. Garrett Park*, 80 Md. 400; and *State v. Broadbelt*, 89 Md. 365).

And the legislative authority to control stream pollution under the police power is similarly upheld in the following cases:

Miles City v. Board of Health, 30 Mont. 405; 102 Pac. 696; 25 L. R. A. (N. S.) 589; decided 1900.

State Board of Health v. Diamond Mills Paper Co. 63 N. J. Eq. 111; Aff. 64 N. J. Eq. 743.

Brookline v. Mackintosh, 133 Mass. 215.

State v. Morse, 84 Vt. 387; Ann. Cas. 1913 B, p. 218; decided May 8, 1911.

Commonwealth v. Stason, 180 Mass., 247, decided 1903.

Nelson v. State Board of Health, 186 Mass., 330, decided 1904.

Lewis v. Stein, 10 Ala. 24.

Salt Lake City v. Young, 45 Utah, 349, 145 Pac. 1047.

This recognition of the authority to curtail riparian rights under the police power is not quite universal, and the courts of a few of the States have held, or strongly intimated, that such detailment amounts to a taking of property or property rights, which the constitutions of each of the States only permit upon payment of compensation.

For example, in *People v. Hulbert* (151 Mich. 156, 64 L. R. A. 265) it does not appear that any statute was relied upon and hence the extent of the power to enact such legislation was not directly involved. Respondent had been convicted of bathing in a lake which the city of Battle Creek had recently commenced to utilize as a source of water supply, the city having become a lower-riparian owner on the lake. The theory of the prosecution appears to have been that the mere fact that the water of the lake was being utilized for a water supply operated to constitute bathing in the lake a nuisance. The Michigan Supreme Court repudiated this theory and held the conviction invalid. In the course of the opinion, in discussing the police power of the State generally, the court made use of the language which is susceptible of a construction that would deny the right even by legislation to restrict the common-law riparian rights of the respondent without compensation.

Indeed, the Michigan case has been so construed by the Supreme Court of Vermont, although that court refused to follow what it considered the Michigan holding, but followed the weight of authority in holding such legislation valid without compensation.

State v. Morse, 84 Vt. 387, 80 Atl. 180; Ann. Cas. 1913 B, p. 218.

And the Maryland Supreme Court has likewise given expression to the view that legislation of this character must provide compensation to one whose riparian rights are restricted. In the case of *Helfrich v. Catonsville Water Co.* (74 Md. 269, 13 L. R. A. 109) the water company had sought an injunction against Helfrich, not relying upon any statute but upon the theory that the mere fact that the company had commenced to utilize a stream for the purpose of obtaining a public water supply was of itself sufficient to render illegal the watering of

his cattle in the stream by Helfrich, an upper proprietor. The Maryland Supreme Court not only denied this contention, but went beyond what was actually involved and necessary to a decision of the case and said that the riparian rights of Helfrich could not be taken from him even by legislation, except upon paying of compensation.

His right was not in any way abridged by the incorporation of the water company and the establishment of its works. And it was not in the power of the legislature to abridge it. It is a right of property protected by the declaration of rights. The water company has power under its charter to acquire the water right by making due compensation to the owner, but not otherwise.

There appears to be a reluctance upon the part of the Court of Appeals of New York to meet squarely the question of the validity and the scope of the statute of that State for the preservation of water supplies. In case of *City of New York v. Blum* (208 N. Y. 237), the defendant, Blum, was the owner of a pond upon which he allowed a large flock of ducks to swim. This pond had an outlet from which the water of this pond flowed into other waters from which the water supply of the city of Brooklyn was taken.

Acting under the New York statute, rules and regulations were established by the State board of health for the protection of this supply. The city of New York contended and the lower courts held that the defendant was violating these rules and regulations and granted an injunction upon that ground. When the case reached the court of appeals, the granting of the injunction was sustained, but that court expressly declined to rest its decision upon the ground of the violation of the rules of the board of health. It was there held that the defendant, Blum, was not making an unreasonable and excessive use of the pond and should be enjoined upon common-law principles.

While, as has been seen, the weight of authority recognizes the right of the State to restrict riparian rights by legislation even without compensation for the protection of water supplies, yet it by no means follows that riparian rights are affected by the mere establishment of the water supply without legislation.

In other words, the riparian owner's right to make a reasonable use of the stream continues until restricted by specific legislation. The fact that a municipality or water company engaged in supplying water to the public commences to use the stream, the purpose of the water supply can not in and of itself affect the riparian owner's right to make a reasonable use of the stream. Such was the holding in the case of *State v. Hulbert* (*supra*) and *Helfrich v. Catonsville Water Co.* (*supra*), and it is not believed that the soundness of these decisions has ever been challenged.

It should, of course, be borne in mind that even if the right of a State to restrict the rights of the riparian owner under the police

power and without compensation should be denied, there would still remain the power of the State to limit those rights to any extent deemed expedient under the power of eminent domain. The right to take either tangible property or riparian rights under this power has never been challenged, but compensation must be made when the legislature acts under the power of eminent domain, which need not be made where the police power is held to furnish authority.

From an ethical point of view much might be said in favor of giving compensation to riparian proprietors. Frequently the effect of limiting the riparian owner's right to the use of a stream is to inflict upon him a real and substantial property loss. This may be the result even when the riparian owner has acted in perfect good faith and in accordance with good citizenship. Take the case of the discharge of sawdust into a stream. Such discharge seldom or never occurs except as an incident to useful lumbering operations. Such a discharge may be commenced at a time when no harm could result and may only become harmful when the water lower down the stream is sought to be utilized for a water supply. It may be entirely proper and necessary so to utilize the stream, but is it either proper or necessary to deprive the sawmill owner of his right to make use of the stream without compensating him for the loss he will sustain?

The State of Connecticut has taken the view that where riparian rights are taken away for the purpose of protecting the water supply the riparian proprietor must be compensated therefor. The Connecticut statute, chapter 137 of the acts of 1900, provides, in section 5, that when any land or building is so used as to pollute the waters from which ice is procured, or a reservoir used for supplying the residents of a city, town, or borough, or any source of supply of such reservoir, is liable to pollution in consequence of the use made of the land or building that application may be made by the authorities of the city, town, or borough, or the corporation having charge of the reservoir, etc., to the superior court in the county where the reservoir or water is located and that the court may make such order as is necessary to preserve the purity of the water or the ice, but the statute contains this further provision, section 6:

Whenever any order is made by the superior court for the abatement of any nuisance to such water or ice and said court shall find that compliance with said order will damage any person or corporation or deprive him or it of any substantial right said court may assess just damages in favor of such person or corporation, to be paid by such municipality, person, or corporation as the court may decree.

In a comparatively recent case the Supreme Court of Connecticut has had occasion to construe this statute and has held that even where the use made of the premises was commenced by the riparian pro-

prietor after full notice to him that the water was being utilized as a water supply, and that if he should make such use of his premises he would be enjoined. In construing this section, the court said:

• • • We think • • • that section 6 of the act of 1900 was intended to provide for the assessment of damages in cases like this, where the thing complained of as a nuisance or as dangerous to the public health would not be objectionable except for its proximity to a source of water supply.

The history of this legislation shows that the general assembly, while giving full protection to sources of water supply, has always made some provision for possible compensation to the injured landowner, and has never acceded to the plaintiff's broad claim that danger to the public health was of itself a sufficient ground for an injunction without compensation. The original legislation on this subject was chapter 27 of 1883, which was limited to cases of actual "injury to the water," and authorized the superior court to make any orders necessary to preserve its purity. The act then provided that, "where the law requires compensation to be made," the court should appoint three disinterested freeholders, who should determine and award the compensation to be paid before the order was carried into effect. The general assembly thus recognized at the beginning of this legislation that modern theories of sanitation might require the court to issue injunctions for which compensation was required by law, although the order was necessary to preserve the purity of a public water supply. In the revision of 1902, the right to injunctive relief was extended to cases where "such water is liable to pollution," and the recognition of a possible right to compensation takes the form of a direct grant (sec. 2600) of power to "take such lands or rights" as the superior court might deem necessary for the purpose of preserving the purity of the water supply; coupled with the same provision for compensation (sec. 2601) as in the act of 1883. In 1903 (Pub. acts 1903, c. 192) the act, which up to that time had been restricted to reservoirs, was extended to any source of supply for such reservoirs, and the powers given to the superior court extended to any judge thereof in vacation. By the present act, ice ponds are protected as well as sources of water supply, and the superior court is given power, when any order is made for the abatement of any nuisance to water or ice, to assess just damages. Sections 2600 and 2601 remain in force, and the result is that there are now two methods of compensating an injured landowner; one under section 2601 by the appointment and award of a committee of freeholders, and the other by the superior court. The former applies to cases when an application is made for the taking of lands or rights therein which are deemed necessary for the purity of the water supply, and is limited to cases where "the law requires compensation to be made." The latter extends to cases where the abatement of a "nuisance to such water or ice" damages the landowner or deprives him of any substantial right, in which case the court "may assess just damages."

We think the phrase "nuisance to such water or ice" aptly describes a condition which is objectionable only or chiefly because of its effect or potential effect on such water or ice, and that section 6 authorizes the assessment of just damages to a landowner who is damaged or deprived of a substantial right by the abatement of such a nuisance.

The next question is whether the damages awarded in this case are "just damages," and the plaintiff's claim on that point is that the defendants have no right to compensation because they went into the business after full notice and with the knowledge that the plaintiff would seek an injunction. It is pointed out that one who avails himself of the proximity of the water supply to establish a new business which would be impossible except for such

proximity, and after notice that it will create a nuisance, stands in a very different equitable position from one who has long carried on a lawful business which afterwards, in the light of better knowledge of sanitation, comes to be regarded as dangerous to the public health. That is quite true, and it must doubtless have had its effect on the amount of damages awarded in this case. On the other hand, it can not be so that the plaintiff by maintaining a public water supply, and by very properly giving notice of its intention to protect it, can acquire any legal rights in adjoining lands. If these defendants have been lawfully deprived of the right of carrying on a public pleasure resort and picnic ground on their land, it must be because their property has been pro tanto taken for a public use, and for that taking they are entitled to just compensation under the statute. The plaintiff's property right in having its water supply kept free from pollution is merely an incident of the public use to which its property is dedicated, and must be exercised in accordance with the Constitution and the statutes. We are not called upon to determine whether the State might in the exercise of its police power have forbidden the defendants to make any use of the reservoir for boating, for it has not attempted to do so * * *.

Aside from the fact that the policy of providing compensation to riparian proprietors, whose rights are restricted, removes all possible doubt of the validity of the legislation, such policy would seem to be the generous and proper one for the State to assume. In other words, it would seem that the State can hardly afford to be put in the position of having done anything that would approach the confiscation of property or property rights.

The fact that the Legislature of Massachusetts modified its law prohibiting the discharge of sawdust into a stream as a result of the case of *Commonwealth v. Sisson*, previously mentioned, would seem to indicate that drastic legislation curtailing common law riparian rights without compensation tends to create a strong protest. While it is true that the legislation of that State prohibiting the pollution of streams to the detriment of water supply has not been similarly amended, yet it is hardly probable that there is the same unanimity of approval of that legislation in the State as would be likely to obtain if the act had provided compensation to the riparian proprietor.

EVEN THOUGH A RIPARIAN OWNER MAY HAVE ACQUIRED A RIGHT BY PRESCRIPTION AS AGAINST LOWER PROPRIETORS ON THE STREAM TO POLLUTE THE SAME, HE IS NEVERTHELESS AMENABLE TO LEGISLATION ENACTED UNDER THE POLICE POWER FOR THE PRESERVATION OF THE PURITY OF THE STREAM AND CAN NOT CLAIM COMPENSATION UNLESS THE SAME IS PROVIDED IN THE LEGISLATION.

In the case of *Sprague v. Dorr* (185 Mass. 10), decided January 7, 1904, the Massachusetts court used dictum which cast some doubt upon this question. The court said:

* * * Whether in the exercise of the police power for the preservation of the public health, the legislature, without providing compensation, might forbid the pollution of water by one who has acquired a prescriptive right to pollute it as against other proprietors, we need not decide.

And this case, singularly enough, has been cited as an authority for the proposition that prescriptive rights can not be interfered with under the police power, but only under the power of eminent domain and upon providing compensation.

Thus in a note on the "validity of the statute or ordinance regulating the methods" (Ann. Cas. 1913 D, p. 62), it is said:

A riparian owner whose use of the stream is thus restricted (by State legislation) is without remedy unless he has acquired the right to pollute the stream by prescription, in which case his right so to do may be taken away, but he has, in return, a right to damages. (*Sprague v. Dorr*, 185 Mass. 10.)

But such doubt as may have been cast by the above dictum upon the right of the State to enact legislation under the police power in contravention of prescription appears to have been set at rest in the Massachusetts case of *Commonwealth v. Sisson* (189 Mass. 247), decided October 17, 1905. That case was one in which a statute relating to the discharge of sawdust into the streams containing fish was upheld by the court. The opinion contains the following language:

* * * The right to run a sawmill on the bank of a brook or river is, like all rights of property, subject to be regulated by the legislature when the unrestrained exercise of it conflicts with other rights, public or private. (See *Commonwealth v. Alger*, 7 Cush. 53, 54; *Rileout v. Knox*, 148 Mass. 368.) The defendants' contention that they have a prescriptive right to discharge sawdust into the river (even if it kills or injures the fish therein), which prescriptive right can not be taken away or impaired without compensation being made therefor, means this and nothing more: Where the legislature, up to the passage of the act here in question (St. 1890, c. 129) had not regulated the business of sawing wood on the banks of streams having in them edible fish, and where, in the absence of such regulation, the defendants had discharged sawdust into the stream for 30 years, the people have lost the power to regulate the conflicting rights of sawmills on the bank of the stream and to preserve fish in the stream itself. The statement of the proposition is enough to show that there is nothing in it. * * *

In the case of *Miles City v. State Board of Health* (39 Mont. 405), decided July 3, 1909, the defendant city sought the annulment of an order issued by the State board of health and prohibiting the city from emptying sewage into Yellowstone River. Among the contentions of the city was that it had acquired a right by prescription.

The court said:

* * * It is further contended that the city of Miles City has acquired by prescription the right to discharge its sewage into the Yellowstone River. The seriousness with which counsel for the city have urged this impels us to give it attention. The cases cited in their brief, however, do not sustain them. Those cases refer to rights acquired as against private individuals; but when the city asserts that it has acquired such prescriptive right as against the State, and that it is a right of such character as that against it the police power of the State can not be invoked, it assumes an altogether unique position. In the first place, a city is but one of the governmental agencies of the State, and as

such agent it could not acquire the right by prescription; for the elements of adverseness, exclusiveness, and claim of right are absent during the entire period of the city's use of the river, and those elements are essential to the establishment of a right by prescription. (*Talbott v. Butte City Water Co.*, 20 Mont. 17; 73 Pac. 1111.) Furthermore, the right which the State is attempting to assert through the agency of the State board of health is a public right—a right to protect the health of the people of the State—and as against such public right prescription does not run. (*Commonwealth v. Moorehead*, 118 Pa. 344; 4 Am. St. Rep. 509; 12 Atl. 424; 22 Am. and Eng. Ency. of Law, 2d ed., 1190.) There is yet another reason why the city can not acquire such a right by prescription as that against it the State may not invoke its police power. It is now generally conceded that the police power is such a power, inherent in the State for the protection of the public, that the State may not waive or divest itself of the power to exercise it. (*In re O'Brien*, 20 Mont. 530, 75 Pac. 196; 8 Current Law, 36; *Portland v. Cook*, 48 Or. 550, 87 Pac. 772, 9 L. R. A., n. s., 733; 1 *Abbott on Municipal Corporations*, 209.) It would seem to follow, then, as a matter of course, that notwithstanding the length of time the city has enjoyed the privilege of discharging its sewage into the river, the State may, in the interest of the public health and safety, regulate such use, or if necessary, prevent the continuance of it. Indeed, if the State had consented to the use of the Yellowstone River by Miles City for the purpose of discharging its sewage therein, such consent would not have amounted to more than a license, which the State might revoke whenever public interests require it. (*Portland v. Cook*, above.)

But if it was possible for the city to have acquired the right which it asserts, that fact of itself would not preclude the State from enforcing any reasonable police regulations, even though such regulations called for an abandonment of the right asserted in the manner asserted; for all property is held subject to the right of the State to so regulate and control its use as to secure the general safety and public welfare. (*City of Helena v. Kent*, 32 Mont. 279, 80 Pac. 258; *Cooley's Constitutional Limitations*, p. 830.) And in the proper exercise of this police power one may even be restrained from doing a thing in itself lawful and right (*City of Butte v. Paltrovich*, 30 Mont. 18; 104 Am. St. Rep. 698; 75 Pac. 521), or may have his property destroyed, even though he himself is not at fault. (*Cooley's Constitutional Limitations*, p. 878.) In fact, the reason for the exercise of this power finds expression in the two maxims, "Sic utere tuo ut alienum non laedas" and "Salus populi suprema lex."

The statute does not deprive Miles City of any property right. It does not forbid the city using the Yellowstone River for the purpose of discharging its sewage, provided the sewage has been subjected to some practical means of purification. The statute looks only to a proper regulation of the use asserted and not to a denial of the use; and the mere fact that the city was making use of the river for discharging raw sewage into it at the time this statute was enacted, which modifies such use, is not any valid objection to the statute. (*Cooley's Constitutional Limitations*, 7th ed., chap. 10; *Health Department v. Rector*, 145 N. Y. 32, 45 Am. St. Rep. 579, 39 N. E. 833, 27 L. R. A. 710.)

SUCH LEGISLATION IS NOT RENDERED INVALID BY THE FACT THAT IT IS MADE APPLICABLE TO A PORTION OF THE STATE ONLY, PROVIDED NO UNREASONABLE OR ARBITRARY CLASSIFICATION BE ADOPTED.

In *State Board of Health v. Greenville* (86 Ohio St. 1, 98 N. E. 1019) the Ohio statute of April 7, 1908, entitled "An act to authorize the State board of health to require the purification of sewage and public

water supplies and protect streams against pollution," which is section 1249 et seq., General Code, was before the court. That statute contained a provision to the effect that no city or village which was discharging sewage into any river separating the State of Ohio from another State should be required to install sewage purification works as long as the unpurified sewage of cities or villages of any other State should be discharged into the river above such Ohio city or village. This provision was claimed to render the act unconstitutional. The court said:

* * * The fourth objection to this act of the general assembly urged by counsel for plaintiff in error in their printed briefs is as follows: "Said act being of a general nature, does not have uniform operation throughout the State, and is, therefore, in conflict with section 26 of Article II of the constitution of the State of Ohio. That portion of the act said to violate this provision of the constitution is as follows: '*Provided, That no city or village that is now discharging sewage into any river which separates the State of Ohio from another State shall be required to install sewage purification works as long as the unpurified sewage of cities or villages in any other State is discharged into said river above said Ohio city or village.*'"

This contention presents the most difficult question in this case. The act under consideration is beyond all question a law of a general nature and therefore is clearly subject to the prohibition of this section of the Constitution. It is suggested that if this exception, classification, or whatever it may be called, should be found to be unconstitutional, that portion alone of the statute should be declared void and the balance permitted to stand; but that can not be done, for the reason that the statute would then apply to the municipalities now excluded from its operation. A court may sometimes hold a portion of the statute unconstitutional and the balance of the statute valid, when the result would be to relieve persons or territory from the provisions of the statute; but it can never do this when the result would be to extend the law to additional persons or territory. To do this would be invading the province of the general assembly and would be legislating for territory never included by the general assembly in the operation of the statute. There is a provision, however, in this exception, as found in the original enactment, that a court might hold to be invalid and still sustain the residue of the original act, and that is in reference to cities that might hereafter come within the same class and condition as those now discharging sewage into the river. But whether it should do so or not with this particular act is now unimportant. In the General Code of Ohio the language of this section has been changed, and it now reads: "But no city or village discharging sewage into a river which separates the State of Ohio from another State," etc. Therefore the statute as it now reads exempts all cities that may now or hereafter discharge sewage into a river which separates the State of Ohio from another State so long as the unpurified sewage of cities or villages of another State is discharged into the river above such village or city of this State, and we take it that counsel are more particularly interested in having the constitutionality of the present law determined than in having this court answer a moot question.

The question then presented is whether the General Assembly of Ohio has attempted a classification or an exception which is a false, unnecessary, and arbitrary one, or whether it be reasonable, just, and necessary. This court has repeatedly held that classification is often proper and sometimes necessary in

legislation in order to define the objects on which the general law is to take effect, but has taken equally as firm a stand against any arbitrary, vicious, or faulty classification used to evade this constitutional limitation. (*Gentsch v. State*, 71 Ohio St. 151, 72 N. E. 900.) We take judicial notice of the fact that the Ohio River is the only river that comes within the terms of this exception. This river separates the State of Ohio from the States of Kentucky, West Virginia, and Pennsylvania. This court held in the case of *Booth v. Shepherd* (8 Ohio St. 243) that "The territorial limits of the State of Ohio extend on the southeast at least to the line of ordinary low-water mark on the northwest side of the Ohio River." The Northwest Territory was described in the cession by the States to the General Government as "territory situate, lying, and being to the northwest of the Ohio River," and it was held in the case of *Handly v. Anthony* (5 Wheat. 374, 5 U. S. (L. ed.) 113) that where "one State is the original proprietor and grants the territory on one side only, it retains the river within its own domain, and the newly created State extends to the river only." Neither of the States being a party to that litigation, this would not be a final adjudication with reference to their proprietary rights, but if the Ohio River is without the boundary of the State of Ohio and territory over which the general assembly has no control, as these adjudications would indicate, any attempt to legislate in reference thereto would necessarily be futile.

We are not concerned with the riparian rights of lower proprietors on the Ohio side of the Ohio River, nor with the remedy they may have for any private wrongs to these rights. In this inquiry we are only concerned with the authority of the State to extend its jurisdiction over the territory occupied by the Ohio River, and if that territory is not a part of the territory of Ohio, this exception, whether written into the law or not, must necessarily obtain, for even if the act by its terms included the Ohio River and that river is not a part of Ohio it would be extraterritorial and impossible of enforcement over that territory. This act in its title declares, among other things, that it is an act "to protect streams against pollution." This certainly refers to streams within and not without Ohio, and could not by any liberality of construction be held to include rivers beyond the State's territorial limits.

This is too important a question to determine in a cause where it arises only incidentally to the main issue in the case, especially when it is not necessary to the disposition of the case at bar, for if it be conceded that the territorial limit of the State extended to the center of the Ohio River, the objection would not necessarily be well taken. Every law is supposed to serve some purpose, and it would be absurd to impose burdens upon persons, corporations, villages, and cities that could not possibly work to the public good or operate to public advantage or the protection of private rights. One of the evident purposes of this act, and so declared in its title, is to prevent the pollution of streams, and where it is apparent that the State is powerless to prevent this pollution by reason of the control and authority of States bordering the opposite bank of a river, it would not only be folly but unjust and arbitrary to compel the citizens of this State to do or refrain from doing any act, the doing of which, or the refraining from which, would operate to no good purpose, either public or private.

It has been repeatedly held by this court that where a law is available in every part of the State as to all persons and things in the same condition or category it is of uniform operation throughout the State. (*State v. Spellmire*, 67 Ohio St. 77, 65 N. E. 619; *Cincinnati v. Steinkamp*, 54 Ohio St. 284, 43 N. E. 490; *McGill v. State*, 34 Ohio St. 228; *State v. Bargus*, 53 Ohio St. 94, 41 N. E. 245, 53 Am. St. Rep. 628.)

This law does operate uniformly in every part of the State upon all persons and things in the same condition or category. There is a substantial reason for excluding from the operation of this statute those persons, corporations, villages, and cities located on the banks of a stream that separates Ohio from another State. It is not an attempt by the general assembly of Ohio to avoid the limitation of this provision of the constitution by a false or faulty classification, but, on the contrary, is a fair and honest effort to legislate for all the people of the State without unjust or arbitrary discrimination in favor of one class to the advantage of another. To compel those persons, corporations, villages, and cities bordering upon the Ohio River to refrain from discharging sewage into the Ohio River while the cities on the opposite banks are so doing would serve no purpose and accomplish no good results. It would be an absurdity to impose useless burdens upon them, and the purposes of the statute would be no nearer accomplished than by excluding them from the operation of the law. It would be so unjust and arbitrary as to shock the public conscience. The fact that it would be productive of no good results is sufficient reason for the classification and for exempting them from the provisions of this law. The strongest argument that can be made against this classification is that the law divides the people and cities of the State into two classes, distinguishable only by the condition surrounding each. One class is compelled to do and refrain from doing certain things, because the doing or refraining from doing will operate to the substantial benefit of all the people of the State. The other class is exempted from doing and refraining to do the same things because their doing or refraining from doing these things would operate to nobody's advantage. It would seem that it would not require a Solomon to determine that this is not an unjust or unfair discrimination or false or faulty classification, and that notwithstanding this exception the law does operate uniformly as to all persons and things in the same condition or category. Classification is not only proper, but sometimes absolutely necessary in legislation. It is only when there is no substantial reason for the classification, when it clearly appears that there is no real difference existing and that classification has been resorted to by the general assembly merely for the purpose of avoiding and escaping the constitutional limitation, that a court will declare a statute unconstitutional for this reason.

So in *State v. Griffin* (69 N. H. 1, 76 Am. St. Rep. 139, 39 Atl. 260, 41 L. R. A. 177), where a statute was passed prohibiting the deposit of sawdust in the tributaries of Massabesic Lake, which lake is a source of water supply of the city of Manchester. The defendant was convicted for violation of the statute and contended that it was unconstitutional, as not being an equal and uniform law. The New Hampshire court said:

A law that confers equal rights on all citizens of the State, or subjects them to equal burdens, and inflicts equal penalties on every person who violates it, is an equal law, though no one can enjoy the right, be subjected to the burden or infringe its provisions, without going to or being in a particular part of the State. It does not discriminate in favor of some at the expense of others. There are places regarding which any protective legislation must necessarily be special.

And in the case of *State Board of Health v. Diamond Mills Paper Co.* (63 N. J. Eq. 111, affirmed in 64 N. J. Eq. 743, 53 Atl. 1125), a suit in equity was brought under a statute prohibiting the discharge of polluting matter of any kind whatsoever into any brook, stream,

or reservoir from which a public water supply is taken. The act excepted from this provision any municipality "which at the date of the passage of this act has a public sewer or system of sewers, drains or system of drains, legally constructed under municipal or township authority discharging its drainage as sewage into such river, etc."

The court said:

It is urged that the act is objectionable because it exempts from penalty municipalities which, at the date of its passage, have legally constructed sewers discharging their sewage into rivers and streams; that it is, therefore, special because its prohibitions act upon some municipalities and not upon others, and local because it exempts from its operation parts of some streams, viz, those into which sewage is now flowing. The argument, of course, goes to this extent, that the legislature has no power, except by private, local, or special bill, of which notice is given, to preserve the waters of the State in their present condition of purity, without exacting the impossible requirement that all water courses from their source to their mouth shall be hereafter kept pure and potable. I think that waters which either are or, under existing law, ought to be pure and potable, may properly be put into a class by themselves. I think further that, having regard to the geography of the State and the shortness of its water courses, the potable waters of the State may be properly classified as those which are above the points of lawful sewage discharge and the non-potable as those which are below such points. There is always a possibility that the germs of disease and epidemic may be present in streams and waters of the latter class, however much the sewage and drainage may be diluted, and it is reasonably certain that even if in some cases conditions may be improved, the waters below the points of present discharge will never regain their original purity. As to the class of potable waters, the prohibition binds all alike.

MOST COURTS CONSTRUE STRICTLY STATUTES FOR THIS PURPOSE AND HOLD THAT SUCH CONSTRUCTION DOES NOT RENDER THEM UNCONSTITUTIONAL.

In *State v. Wheeler* (44 N. J. L. 88) "An act to prevent the willful pollution of the waters of any of the creeks, ponds, or brooks of the State," made it a misdemeanor to throw any carcass, offal, or other offensive matter into any creek, pond, or brook, the waters of which are used to supply any aqueduct or reservoir for distribution for public use. A conviction having been had under the statute, the respondent appealed and contended that the lower court had erred in refusing to charge the jury that unless the respondents' acts were calculated to render the water as supplied to reservoirs impure or offensive, they could not be convicted, and that if a construction of the act in accordance with a request to charge as above were not adopted, then the statute would be unconstitutional, as depriving an owner of property of its use without compensation.

The court overruled these contentions and said:

The whole act plainly shows a design to protect from pollution the waters of creeks, etc., used as the feeders of reservoirs for public use, without any refer-

ence to whether such pollution in fact appreciably affects the water when arrived at the reservoir.

Nor does such a construction render this act objectionable. The design of the act is not to take property for public use, nor does it do so within the meaning of the constitution. It is intended to restrain and regulate the use of private property so as to protect the common right of all the citizens of the State. Such acts are plainly within the police power of the legislature, which power is the mere application to the whole community of the maxim, "Sic utere tuo, ut alienum non laedas." Nor does such a restraint, although it may interfere with the profitable use of property by its owner, make it an appropriation to a public use so as to entitle him to compensation. (Citing *Comm. v. Alger*, 9 Cush. 63; *Comm. v. Tewksbury*, 11 Metc. 55; and other cases.) * * *

Nor is there anything to render such legislation objectionable because in some instances it may restrain the profitable use of private property, where such use, in fact, does not directly injure the public in comfort and health. For to limit such legislation to cases where actual injury has occurred would be to deprive it of its most effective force. Its design is preventive, and to be effective it must be able to restrain acts which tend to produce public injury. Many instances of the exercise of such power may be found (citing instances). * * * The object of this legislation is to protect the public comfort and health. For that purpose the legislature may restrain any use of private property which tends to the injury of those public interests. That the pollution of the courses of the public water supply does so tend, no one can deny.

In *City of Durham v. Eno Cotton Mills* (141 N. C. 615, 54 S. E. 453, 7 L. R. A. (N. S.) 321), a statute (revisal 1905, sec. 3051) provided that—

No person or municipality shall flow or discharge sewage into any drain, brook, creek, or river from which a public drinking-water supply is taken, unless the same shall have been passed through some well-known system of sewage purification approved by the State board of health; and the continual flow and discharge of such sewage may be enjoined upon application of any person.

Plaintiffs, a city and a water company, sued the defendant for injunction. The defendant contended that because the sewage from the defendant's mill was emptied into the river some 17 miles below the intake of the water company, to hold the statute applicable would involve an unconstitutional taking of the defendant's property without compensation, but the court said:

It will be observed by reading the act that it is not required that the sewage discharged into the stream should injuriously affect the water at the intake; it is quite sufficient if it pollutes the river at the sewer's outlet. The legislature has decided that it is desirable to preserve our natural streams in at least their present state of purity, and where they have been polluted, to remove the cause as speedily and effectually as possible. It has therefore said that no person shall deteriorate the water at all by sending sewage into a natural stream, until it has been purified and made wholesome, or until all the noxious matter in it has been eliminated. All this means, of course, that the water shall not be poisoned by sewage at the outfall. We must assume that the defilement of the water is an injury which is forbidden by the legislature for perfectly good and sufficient reasons. It is not for us to question the policy or expediency of such an enactment. In this respect the legislature has a large discretion, to be

exercised in such way as will, in its judgment, promote the interests and advance the welfare of the people, and it has this discretion to such an extent as to be virtually a law unto itself so far as the manner of its exercise is concerned. Such legislation is not intended merely to abate an existing nuisance, but to prevent that being done which is a menace to the public health, and which it is supposed may become a deadly peril and a public nuisance because fatal in its consequences. It is not, therefore, a void law because it is founded upon a mere apprehension of evil, but is a precautionary measure which is clearly within the police power of the State and to be adopted when deemed necessary to secure the public health. * * *

And quoted with approval the above language from *State v. Wheeler* (44 N. J. L.)

And in *State Board of Health v. Diamond Mills Paper Co.* (63 N. J. Eq. 111, affirmed in 64 N. J. Eq. 743, 53 Atl. 1125), where the State Board of Health of New Jersey brought suit for injunction to prevent the defendant from discharging polluting matter into Rahway River, in violation of a statute which prohibits the discharged of—

Sewage, drainage, domestic or factory refuse, excremental or other polluting matter of any kind whatsoever, which either by itself or in connection with other matter, will corrupt or impair or tend to corrupt or impair the quality of the water of any river, brook, stream, or any tributary or branch thereof or of any lake, pond, well, spring, or other reservoir from which is taken or may be taken any public supply of water for domestic use in any city, town, borough, township, or other municipality of this State, or which will render or tend to render such water injurious to health, above the point from which any city, town, etc., shall or may obtain its supply of water for domestic use.

The defendant contended that the point of the discharge of the polluting matter, which was sought to enjoin, was some 8 miles above the intake of Rahway City and that the water was not polluted when it arrived at the intake, or at least it was not shown, and the defendant contended that to enjoin him under such circumstances would be unconstitutional, as taking of private property for public use without compensation, but the court denied the contention upon the authority of *State v. Wheeler*. It was pointed out, however, that if the city had been suing it would have been obliged to show actual injury in order to entitle it to relief, but that in this case the action was not brought by the city but by the board of health, which was authorized to sue under the statute and need not show actual injury.

In *State of West Virginia v. Southern Coal & Transportation Co.* (71 W. Va. 470; 76 S. E. 970; 43 L. R. A. (N. S.) 401) the defendant company was indicted for violating a statute (see 2768 of the Code of 1906) which provided:

It shall be unlawful for any person, firm, or corporation to throw in, or allow to enter, any stream or watercourse in this State, sawdust or any other matter deleterious to the propagation of fish.

It was contended that the indictment was defective because it failed to show that the stream, into which defendant was charged with casting sulphur water, was adapted to the propagation of fish. But the contention was overruled, the reasoning being that the legislative intent being to protect the fish in the State, this was to be accomplished only by protecting all streams, since polluting matter cast into one would flow into another and destroy fish.

In *Miles City v. Board of Health* (39 Mont. 405, 102 Pac. 696, 25 L. R. A. (N. S.) 589), decided July 3, 1909, the defendant city planned to discharge its sewage into Yellowstone River. The board of health issued an order prohibiting the installation of such an outlet and ordered and directed "that the said Miles City, at as early a date as practicable dispose of the sewage of said city in some sanitary manner, acceptable to the said State board of health." The city appealed from the order to the district court. The order was annulled and the board appealed to the supreme court and the supreme court overruled the district court and upheld the board. In the course of the opinion it was said:

* * * Counsel for the city misapprehend the scope of this statute. The prohibition is against the pollution of the waters of a stream which is a source of water supply. Assuming for the purposes of this appeal, as counsel did upon the oral argument, that the reference in the order of the board is to the city of Glendive particularly, and assuming, further, that the intake of the Glendive water supply is many miles below the outflow of the Miles City sewer, the order of the board, on its face, is still justified, for the prohibition is not directed against polluting them at such outfall. The prohibition is against polluting the waters at any place within the State, and it is therefore wholly immaterial that the putrescible constituents of the sewage are not carried to the intake of the Glendive water supply, if such be the fact. The State, in the valid exercise of its police power, has said by this statute, that hereafter no polluting sewage and no human excrement shall be discharged into any stream which is the source of water supply for a city or town, until such deleterious matter is rendered harmless by some means of sewage purification acceptable to the State board of health. In *Durham v. Eno Cotton Mills* (141 N. C. 615, 7 L. R. A. (N. S.) 321), the court had under consideration a similar statute, and reached the same conclusion which we have indicated above.

It has been seriously suggested, however, that the strict construction placed upon this class of statutes in cases like the above carries the courts beyond the limitations imposed by the Constitution.

Thus in a case note accompanying the report of the *City of Durham v. Eno Cotton Mills* (7 L. R. A. (N. S.) 321) it is argued that it is the right of the riparian owner to cast a certain amount of polluting matter into the stream (citing 1 Farnham on Waters 288); that this is a property right which can not be taken away without compensation or due process of law and that "it would seem that the arbitrary declaration by the legislature that he should no longer enjoy his property right without anything to show that it

was necessary for the public health was surely a deprivation of property and that it was without compensation and without due process of law." It was further said: "The fact of public necessity being the basis of the police power, that fact should be apparent to justify an exercise of the power." No direct authority is cited by the author to sustain this position, and it is believed that the position taken in the note is against the weight of authority. Even so, however, the note is very suggestive of the possibility of doing needless harm to riparian owners through the severity of statutes of this kind and also through a too literal interpretation.

In *Commonwealth v. Straight Creek Coal & Coke Co.* (147 Ky. 790), decided April 18, 1912, defendant was indicted for discharging sawdust into a stream in violation of a statute prohibiting the discharge into streams of substances that would sicken, intoxicate, or kill fish, or render the water unfit, or produce a stench. Defendant demurred to the indictment, contending that sawdust not being one of the substances enumerated in the statute and not of the class of the substances that were enumerated, it could not have been within the intent of the statute. But the demurrer was overruled, it being held that the legislative intent evidently was to prohibit "the putting into the water of 'anything' or 'any substance' whatever it might be, that would cause fish to be sickened, intoxicated, or killed, or render the water unfit for use, or produce a stench."

SOME COURTS HAVE HELD THAT STATUTES ENACTED FOR THE PRESERVATION OF STREAMS SHOULD BE LIBERALLY CONSTRUED IN FAVOR OF THE RIPARIAN OWNER.

Thus in the case of *Cartwright v. Canandaigua Gas-Light Co.* (32 Hun. 403), decided 1884, a New York statute entitled "An act for the preservation of moose, wild deer, birds, fish, and other game," contained in this provision, section 25:

No person, association, company, or corporation shall throw or deposit, or permit to be thrown or deposited, any dyestuff, coal tar, refuse from gas houses, sawdust, lime, or other deleterious substance, or cause the same to run or flow into or upon any of the rivers, lakes, ponds, streams, or any of the bays or inlets adjoining the Atlantic Ocean, within the limits of this State. Any person who shall violate this section, or any member of any such company, association, or corporation who shall authorize any such violation shall be guilty of a misdemeanor, and in addition thereto shall be liable to a penalty of \$50 for each offense. But this section shall not apply to streams of flowing or tidewater which constitute the motive power of the machinery of manufacturing establishments when it is absolutely necessary for the manufacturing purposes carried on in such establishments to run the refuse matter and material thereof into such stream.

The defendant was charged with a violation of this section by discharging into a small stream which flows into Canandaigua Lake refuse substances resulting from a distillation of coal in generating

gas. The evidence did not show very definitely how much of this matter was cast into the stream, but it appeared to have varied in quantity and to have continued for several months before the commencement of the action. The court said:

This act of the defendant clearly amounts to throwing and depositing in the stream the refuse arising from its manufacture of gas. There has been a literal violation of the restraining clause of the statute. (The court then overrules a contention of the defendant that a corporation is not a "person" contemplated by the act.)

A more doubtful question arises, whether under all the proofs a case has been made out establishing that the defendant has been guilty of violating the meaning and purpose of the statute so as to incur the penalty. There is no evidence, not the least, that the waters of the stream or of Canandaigua Lake, into which it flows, have been polluted in such a degree by reason of flowing the refuse matter of the gas factory into the same as to become deleterious and destructive to the life or disturbing to the habits of fish. The proofs presented upon the subject came from the defendant and tended to prove that fish continued to frequent the stream and were not killed or disturbed by reason of permitting the refuse matter to escape therein.

It is manifest that the language of the statute can not be taken literally, because the throwing or depositing of any of the many substances mentioned into a stream or lake, however small the quantity or large the body of water, would be a technical violation of the language of the statute. To constitute a violation of the statute, the quantity of material thrown into a body of water must be such as to have the effect of destroying life or disturbing the habits of fish, in some degree, otherwise the statute would be absurd, harsh, and absolutely unnecessary. By the language of the section it is manifest that it was the intention of the legislature that the acts prohibited must be such as to be deleterious in fact; that is, destructive of the life of fish. The adjective "deleterious" as used at the close of the prohibitory clause has the effect, and we think such was the intention of the legislature in using the same, to limit and qualify the meaning of the previous general words of the paragraph. The common and generally accepted meaning of the word is, "having the power of destroying or extinguishing life; that which is destructive, poisonous, pernicious; as deleterious plant or quality." (Webster.)

* * * It is a maxim in construing penal statutes when general words are used, to restrain their meaning for the benefit of the person against whom the penalty is inflicted. (Devanis, 736; Hall v. Siegel, 7 Lans. 206.)

It is the duty of courts to so construe statutes as to resist the mischief which the law was intended to remedy. The object and purpose of this statute is disclosed in its title, "for the preservation of fish and other game." Unless some act be done which has the effect in some degree of destroying fish or game, no penalty can be incurred by anyone. In commenting upon a statute, penal in its character, Earl, J., said: "It can not be doubted that the lawmakers did not intend that this law should be applied in such cases; and yet they are within the letter of the law. The lawmakers can not always foresee all the possible applications of the general language they use; and it frequently becomes the duty of the courts in construing statutes to limit their operation so that they shall not produce absurd, unjust, or inconvenient results not contemplated as intended. A case may be within the letter of the law and yet not within the intent of the lawmakers, and in such a case a limitation or exception must be implied." (L. S. & M. S. R. R. Co. v. Roach, 80 N. Y. 330, 344.)

Very pertinently these observations are applicable to the construction of this statute and can be properly adopted in disposing of the case before us. The justice's return states that it contains all the evidence given on the trial, and for the reason it does not appear that the quantity of coal tar and other refuse material thrown into the stream by defendant from its factory is destructive to the life or disturbing to habits of fish, we hold that the plaintiff failed to prove a violation of the statute in this instance.

And the later cases in New York appear to hold that this class of statutes must be so liberally construed as not to take away riparian rights unless compensation be provided and that a different construction would render the act unconstitutional. Such seem to be the holdings in—

George v. Village of Chester, 50 Misc. 553.

People ex rel. Goff v. Kirk, 65 Misc. 657.

It may be that any use of the waters of a stream, however long continued, is liable to be controlled, impaired, or destroyed if the legislature of the State shall treat the existence of such a use as incompatible with the health, safety, and welfare of the community, and that, even if the market value of the property is diminished, no right is violated, as the mode in which property is enjoyed may be subject to the rights of all in their health and safety and subordinate to general laws established for their protection. (*Commonwealth v. Upton*, 6 Gray, 473.) When a long-established use of water in a respectable and necessary business is thus impaired or destroyed by legislation, it will be so clearly by express terms or necessary inference, and, if done for the benefit of others, proper compensation will be made therefor. * * * The town "could not expect riparian owners to surrender rights * * * unless they were, in the interest of public welfare, by a general law forbidden to exercise them, or unless proper compensation was provided therefor."

And in *Walker et al. v. City of Aurora* (140 Ill. 402):

The discharge of the proposed system of sewerage is into Fox River, and it is objected that such discharge would contaminate the waters of the stream and be a public nuisance and in violation of paragraphs 2 and 3 of section 277 of the Criminal Code (1 Starr and Curtis's Stats. chap. 38, sec. 277), one of which paragraphs provides that it is a public nuisance to throw or deposit any offal or other offensive matter, or the carcass of any animal, in any watercourse, lake, pond, spring, well or common sewer, street, or public highway, and the other that it is a public nuisance to corrupt or render unwholesome the water of any spring, river, stream, pond, or lake to the injury or prejudice of others. It would be unreasonable and would lead to seriously injurious results if these statutory provisions were construed as showing a legislative intention to absolutely prohibit cities and towns located upon the shores of lakes or banks of rivers from emptying their sewerage into such lakes or rivers. In view of the opinions expressed by expert witnesses and of the quantity of water flowing in Fox River, the rapidity of its current, the tendency of the river to purify itself, the dilution of the sewage by surface and spring water and water from the waterworks before it reaches the mouth of the sewer, we think that the pollution of the water of the river would be very inconsiderable, and perhaps even barely perceptible near the mouth of the sewer. It is suggested that the sewage will be a nuisance to the cities and towns on Fox River below Aurora. If this should turn out to be so, and if the discharge of the sewage into the river should prove to be "to the injury or prejudice of others," and if appellee

should fail to provide suitable appliances for the purification of the sewage matter, then there will be ample opportunity to afford relief, upon complaint being made, either on behalf of the public or of those injured or prejudiced.

And again in the case of *New York v. Blum* (208 N. Y. 237), decided April 22, 1913, while the court sustained the granting of an injunction against the defendant, who was maintaining some 200 ducks upon a pond to the injury of the water supply of the city of Brooklyn, the court rested its decision not upon the fact that the defendant was violating the rules established by the State board of health but upon the fact that his use of the pond was unreasonable in view of all of the circumstances. It was said:

The (trial) court found that the acts of the defendant are violations of certain rules of the State board of health. The question of preserving potable waters from pollution is growing in importance with the increasing density of the population and the growth of urban communities. But we do not consider it necessary to pass upon the effect of those rules or to determine what the State may do in the exercise of the police power to prevent the pollution of potable waters in the interest of the public health and the general welfare, because we have reached the conclusion that, wholly apart from said rules, the trial court was justified in deciding that the defendant was making an unreasonable use of the waters of Prices Stream as matter of fact if not as matter of law.

An English case in which a statute is interpreted liberally in favor of the defendants charged with violating it by polluting the stream is that of *Attorney General v. Birmingham, Tame, and Rea District Drainage Board* (L. R. Chan. Div. 1910, Vol. I, p. 48):

Nothing in this act shall authorize any local authority to make or use any sewer drain or outfall for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal, pond, or lake, until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity and quality of the water in such stream or watercourse or in such stream, pond, or lake.

The attorney general, at the relation of the corporation of Tamworth and others, sought under that section to enjoin the defendants, a drainage board organized under the act, from continuing to discharge sewage from their sewage farm into the River Tame. An eminent chemist, appointed by the court to report upon conditions found, reported that the water of the river, which was somewhat polluted when it reached defendant's works, was not rendered more impure by the discharge of sewage from defendant's plant. The following is from the opinion of the master of the rolls:

Now, is that an absolute prohibition against conveying any filthy water into any natural stream, or is it only a prohibition against conveying filthy or sewage water in such a manner as to prejudicially affect or deteriorate?

It seems to me hardly reasonable to say that a man can be guilty of a statutory offense under this section if he has improved the water by that which he casts into it. I think, therefore, that the question which we submitted to Sir

William Ramsay was the proper question to submit in a case like this, and that it is not true to say that there has been a statutory offense if the defendants have put into the river some water which does contain a certain amount of filth, although it is so much better than the rest of the water which was in it before that upon the whole it improves the character of the water. In other words, it can not be said to deteriorate the purity of the water; on the contrary, it benefits it; and we must read the word "affect" in the sense of prejudicially affect or deteriorate the purity and quality of the water.

Two other concurring opinions were written and the injunction denied.

And in the case of *People v. La Pell* (128 App. Div. (New York) 709), decided in November, 1908, the defendant, a sawmill proprietor, was sued for penalties for violation of a statute (Laws of 1900, ch. 20, sec. 52) forbidding the discharge of "sawdust, shavings, * * * or other deleterious or poisonous substance" into any "waters in quantities destructive of fish inhabiting the same." A judgment was obtained against the defendant and an appeal taken to the appellate division, third department. "There was proof that there were fish in the stream, but there was no proof that any fish had been destroyed by the sawdust or shavings." A number of witnesses testified regarding the amount of sawdust which the defendant discharged into the stream, following which an expert was asked a hypothetical question based upon the other testimony in the case, and he testified that the effect would be to destroy the stream as a spawning ground and that "the effect on the fish would be to drive them out or kill them." The court reversed the judgment on the ground that the prohibition contained in the statute "is not against throwing them (sawdust and shavings) in in quantities sufficient to destroy a stream as a spawning ground, but against throwing them in in quantities destructive of fish."

In the case of *Staffordshire County Council v. Seisdon Rural District Council* (96 Law Times Reports, 328) an action was brought under the rivers pollution prevention act of 1876 to prevent the discharge of sewage into the River Stour. The county court had been asked to make an order under the provisions of section 10 and had refused to do so. The plaintiff appealed.

It appeared that the River Stour was somewhat polluted when it reached the point at which this sewage entered, and it appears to have been the contention of the defendants not that the pollution of the river above furnished a complete excuse for its further pollution at this point, but that the condition of the river when it reached this point of discharge was such that the discharge became a trivial thing that the court ought to disregard. The Court of King's Bench refused to so hold. Two opinions were written, both holding that the order should have been made by the county court.

Darling, J., in his opinion, said:

The statute does not mean that rivers must not be what you call appreciably polluted by one person in addition to others who have already polluted it.

Phillimore, J., in his opinion said:

If there is a percentage of pollution delivered from this village, which only brings the total percentage of pollution to that existing higher up the river, then the Staffordshire County Council are entitled to an order. The late Dr. Melmouth Tidy used to say that a river during its course tended to purify itself by a process of oxydization, especially when falling over weirs and waterfalls, and also if there is any accretion of the volume of water from springs that would have a purifying effect. If, in such circumstances, when the river passed through this village it received back a percentage of the pollution it had lost and a claim was made that such pollution should not be removed, that must not be, and if that learned judge meant by his decision to hold the contrary he was wrong in law.

And further said:

When there is something more of pollution than that minimum of which the law takes no heed, there must be some form or other for prohibiting it.

A STATE MAY LEAVE TO A COMMISSION OR BOARD THE DETAILS OF LEGISLATION FOR PROTECTION OF ITS WATERS.

By the constitutions of the several States the legislatures are given the power to make laws. The general proposition is well established that this power to enact legislation can not be redelegated by the lawmaking body to others, the reason being that the people have placed this power in their legislatures in reliance upon the patriotism and ability of those bodies. (Cooley, Constitutional Limitations, 7th ed., p. 163.)

Nevertheless, while recognizing this general principle, the Massachusetts Supreme Court has held in numerous cases that the legislature may leave to a board or commission the details of legislation; that is to say, instead of enacting a law which definitely marks that which is legal from that which is illegal in regard to pollution of streams, the legislature may leave to a board or commission the final determination of what must be forbidden and what may be permitted.

For example, in legislating to prevent the pollution of streams by sawdust to the detriment of fish life therein the legislature did not name the streams into which it should be illegal to discharge sawdust, but provided that if the board of commissioners of fish and game should "determine that the fish of any brook or stream in this Commonwealth are of sufficient value to warrant the prohibition or regulation of the discharge therein of sawdust from sawmills and that the discharge of sawdust from any particular sawmill materially injures such fish" it should issue an order prohibiting the discharge of sawdust from that mill and that violation of such order should be punishable by fine.

In the case of *Commonwealth v. Sisson* (189 Mass. 247), decided October 17, 1905, the defendants had been served with an order and had been convicted of violating it. In sustaining the conviction the Supreme Court of Massachusetts said:

We are of opinion in the first place that it is within the power of the legislature to protect and preserve edible fish in the rivers and brooks of the Commonwealth, and for that purpose, if they think proper, to forbid any sawdust being discharged into any brook containing such fish. * * *

We are of opinion in the second place that in case the legislature thought that in regulating the conflicting rights of individuals to run sawmills on the banks of a river on the one hand, and of the public on the other hand to have fish live and increase in the same stream, it was not worth while to forbid sawdust being discharged into every stream in which there were edible fish, they could leave to a board having peculiar knowledge on the subject the selection of the brooks and rivers in which the fish were of sufficient value to warrant the prohibition or regulation of the discharge of sawdust. The right of the legislature to delegate some legislative functions to State boards was considered by this court on *Broadbent v. Revere* (182 Mass. 598).

And further, in case the legislature thought that an act which forbade any sawdust to be discharged into any of the streams selected by the board was an unnecessarily stringent one, they could in our opinion leave it to the board to settle in each particular case the practical details required to harmonize best these two conflicting rights.

The result is that in our opinion the action of the board in the case at bar was the working out of details under a legislative act. The board is no more required to act on sworn evidence than is the legislature itself, and no more than in the case of the legislature itself is it bound to act only after a hearing or to give a hearing to the plaintiff when he asks for one; and its action is final as is the action of the legislature in enacting a statute. And being legislative it is plain that the questions of fact passed upon by the commissioners in adopting the provisions enacted by them can not be tried over by the court. This court has been recently asked to try over the expediency of compulsory vaccination in an action under a statute requiring it. (*Commonwealth v. Jacobson*, 183 Mass. 242.) On its decline to do so an appeal was taken to the Supreme Court of the United States, and its refusal to do so was held to be correct. (*Jacobson v. Mass.*, 197 U. S. 11; see particularly p. 30. See also *Devens, J.*, in *Train v. Boston Disinfecting Co.* 144 Mass. 523, 531.)

The practical result is that the defendants are forbidden to conduct their sawmill as they had conducted it for 30 years by a board who have not heard evidence and who have refused the defendants a hearing; that the action of the board is final, and that no compensation is due to them.

This result may seem strange. But it is no less strange than the practical results in cases which are decided by law. Take the case before the court in *Nelson v. State Board of Health* (186 Mass. 330), namely, a farm on the banks of a pond used as the water supply of a town. The State board of health can pass a general regulation, under section 113, Revised Laws, chapter 75, forbidding privies within a specified distance from its shore; and if the defendant had had a privy there for 30 years his right to maintain it would cease, although the order was made without hearing; and the action of the board is final. On the other hand, if the board had proceeded under section 118 to investigate this particular privy, the defendant would have been entitled to a hearing and, on appeal, to a jury, as provided by section 119. * * *

It is interesting to note that apparently as the result of this decision the legislature the very next year amended the act by requiring the commissioners to grant a public hearing before issuing an order, by making the issuance of the order a matter of discretion with the commissioners, and by providing that any party aggrieved by any order might file a petition in equity to have it annulled or modified.

In the case of *John H. Nelson v. State Board of Health*, cited by the Massachusetts Supreme Court (*supra*), the opinion goes into the history of the health legislation in the State to some extent to show that two kinds of power have been given to the local boards of health and likewise the same two kinds to the State boards; that is, first, the quasi legislative power to make rules and regulations, and, second, the quasi judicial power to make orders requiring the cessation of a particular nuisance, and in sustaining the conviction of Nelson for the violation of rules and regulations passed by the State board of health for the sanitary protection of Elders Pond and Assawompsett Pond and their tributaries, which were the source of water supply of the city of Taunton, held that the rules there issued were quasi legislative acts under the legislative power of the board, that they were final, and that the necessity for them was not subject to judicial review.

That the State may delegate to a board or commission the details of an act for the preservation of its streams was also held in the case of *State Board of Health et al. v. City of Greenville et al.* (86 Ohio St. 1), decided January, 1912, and in *Welch v. Cogan* (126 Md. 1), decided April 14, 1915. The Maryland statute specifically provides that the reasonableness of orders issued by the State board of health is subject to judicial review. The Supreme Court of Maryland said:

It scarcely needs to be said that the reasonableness of the exercise of any such power as that entrusted to the State board of health by the act of 1914 is always open to question (*State v. Gurry*, 121 Md. 541), and it is expressly made so by the provisions of section 18 of the act.

In that case the question of the reasonableness of the regulations had not been raised, and the supreme court, instead of making a final disposition of the case, sent it back with instructions to permit an amendment to raise the question of reasonableness.

Generally speaking, the statutes which delegate the authority and control over the streams and water supplies to boards of health, etc., permit the rulings of such boards to be tested in the courts as to their reasonableness.

In Ohio the statute provides for an appeal to a board of engineers, who are to act as arbitrators and whose decision should be final. In the case of *State Board of Health et al. v. City of Greenville et al.* (*supra*), the constitutionality of the act was challenged

upon the ground that it provided for compulsory arbitration and was a violation of the constitutional provision of the State of Ohio, guaranteeing the right of trial by jury. The question, however, was raised not by an individual but by a municipality. The Ohio Supreme Court held that a municipality did not come under the agis of the constitutional provision and sustained the act so far as its applicability to municipalities is concerned. The opinion leaves some question as to the validity of the act as applied to individuals.

THE POWER OF THE STATE TO AUTHORIZE THE DISCHARGE OF SEWAGE INTO STREAMS TO THE INJURY OF LOWER PROPRIETORS IS LIMITED BY CONSTITUTIONAL PROVISIONS.

It has been seen that according to most courts, under the police power, a State may legislate to protect the purity of its streams, even by means of markedly curtailing the common-law rights of riparian proprietors to pollute the same to a reasonable extent, and that this may be done without making compensation to those proprietors whose rights are thus curtailed. But when the State seeks to authorize the discharge of sewage into a stream to the detriment of a lower riparian proprietor an important constitutional question arises, namely, whether such discharge would constitute a taking of the property of lower riparian owners within the meaning of the constitutional provision of the State.

The Federal constitutional provision does not apply.

Although the Constitution of the United States provides that private property shall not be taken for public use without just compensation, it is well settled that this is a limitation on the power of the Federal Government and not on the States. (*Pumpelly v. Green Bay & Mississippi Canal Co.*, 13 Wall. 166, 20 L. Ed. 557.)

But "this limitation on the exercise of the right of eminent domain is so essentially a part of American constitutional law that it is believed that no State is now without it." (*Ibid.*)

The United States Supreme Court has held that the provision of the Federal Constitution applies not only to a case where the actual title to the property is taken, but likewise to one where there is such a physical invasion of an owner's property as to substantially deprive him of all beneficial use.

Pumpelly v. Green Bay & Mississippi Canal Co., 13 Wall. 166, 20 L. ed. 557.

United States v. Lynah, 188 U. S. 445.

The United States Supreme Court has practically limited the doctrine, however, to cases in which there has been substantially a physical taking of the property, depriving the owner thereof of all beneficial use.

Thus in *United States v. Lynah* the principal opinion reviews a number of cases in which it was held that there was no taking of property and distinguishes them all upon the ground either that there was no actual invasion of the premises or that such invasion was not permanent, and the opinion approves the case of *Mills v. United States* (46 Fed. Rep. 738), which was an action growing out of the same improvement as that which caused the injury in *United States v. Lynah*, but where it was found that the injury could be remedied at an expense of some \$10,000 in erecting levees around the plaintiff's rice fields to prevent flooding the fields at high water.

Obviously (said the Supreme Court) there was no taking of the plaintiff's lands, but simply an injury which could be remedied at an expense as alleged of \$10,000, and the action was one to recover the amount of this consequential injury. The court rightfully held that it could not be sustained. Here there is no finding, no suggestion, that by any expense the flooding could be averted. We may, of course, know that there is theoretically no limit to that which engineering skill may accomplish. We know that vast tracts have in different parts of the world been reclaimed by levees and other works, and so we may believe that this flooding may be prevented, that some day all these submerged lands may be reclaimed. But, as a practical matter and for the purposes of this case, we must under the findings regard the lands in controversy as irreclaimable and their value wholly and finally destroyed.

And in *Manigault v. Springs* (199 U. S. 484) Mr. Justice Brown, after mentioning a number of cases in which this question had been before the court, said:

We think the rule to be gathered from these cases is that where there is a practical destruction or material impairment of the value of plaintiff's lands there is no taking which demands compensation, but otherwise where, as in this case, plaintiff is merely put to some extra expense in warding off the consequences of the overflow.

But the decisions of the United States Supreme Court do not control the question in the various States for two reasons—in the first place, the decisions of the United States Supreme Court, while entitled to and receiving great weight and consideration in the various States, are not authority in the State courts; and in the second place, the constitutional provisions of the various States are not all framed in the same language.

The provisions of the constitutions of many of the States are similar to the Federal provision; that is, they prohibit the "taking" of private property for public purposes without just compensation. Probably under that provision no State court would refuse to follow the United States Supreme Court as far as it has gone; that is to say, to the extent of holding that an actual physical invasion of property, depriving the owner thereof of substantially all beneficial use of it would amount to such a taking as would be within the language of the provision.

The Massachusetts Supreme Court in *Diamond v. North Attleborough* (219 Mass. 587), decided December 31, 1914, had before it the case of an overflow of a brook by the defendant city with the result that plaintiff's land was submerged and a portion of it washed away.

The Massachusetts Supreme Court held that although the city was acting under the authority of a statute and with the approval of the State board of health, the injury to the plaintiff constituted a trespass and might, if continued, amount to an appropriation of his property. The court said:

The plaintiffs' complaint is that a part of their land has been submerged by the enlarged flow of the stream and some of it washed away by the increased force of its current. This, in substance and effect, is a trespass. If continued permanently by legal authority, it may become an appropriation. (*United States v. Lynah*, 188 U. S. 445, 464; *Manigault v. Springs*, 109 U. S. 473, 484.)

And in *Williams v. Haile Gold Mining Co.* (85 S. C. 1, 66 S. E. 117), decided November 23, 1909, where the defendant company discharged refuse matter into a stream with the result that there was an overflow and a deposit of debris on the plaintiff's land and such injury to plant life thereon that it became necessary for him to abandon the cultivation of his land, plaintiff recovered damages and an injunction. In sustaining the lower court in granting the injunction, the Supreme Court of South Carolina said:

It has been too frequently held by this court to require further discussion that, when the existence of a nuisance has been established by the verdict of a jury, the party injured is entitled as a matter of right to an injunction to prevent its continuance. (*Threant v. Mining Co.*, 49 S. E. 95, 26 S. E. 970; *Mason v. Apache*, 81 S. C. 554, 62 S. E. 390, 871.) Whatever may be the doctrine in other States, under the provisions of the constitution of this State, that private property shall not be taken for private use without the consent of the owner, the court could not have considered, in deciding whether to grant or refuse the injunction, the question raised by the defendant as to the balance of convenience, or of advantage or disadvantage to the plaintiff and defendant, and the public at large, for the defendant's use of the stream. That question would be pertinent only in an application addressed to the legislature to give such corporations that power of condemnation.

See also the case of *Grand Rapids Booming Co. v. Jarvis* (30 Mich. 308), where an overflow of plaintiff's land was held to be a taking of property. These cases are, of course, strictly within the rule as established by the United States Supreme Court. But there are a number of decisions in the several States that go further than the Federal decisions.

Thus, in *Grey ex rel. Simmons v. Paterson* (60 N. J. Equity (15 Dick.) 385, at p. 391) the Court of Errors and Appeals of New Jersey said:

Riparian owners above tide own ad medium flum aquae, and have a property right in the water flowing along and over their land.

This property right can not be impaired except by the lawful use of the waters by riparian owners higher up the stream.

Lower owners must submit to such pollution as results from the natural or reasonable use of the owners above, produced by the surface drainage or by the percolation of offensive matter through the soil.

But the higher owners can not lawfully combine and by construction of artificial conduits collect foul matter and pour it in mass into the stream. Such a scheme when put into operation constitutes the taking of private property which the legislature can not authorize except upon just compensation to the party injured. (Citing with approval *Leach v. Sterling Iron and Zinc Co.*, 9 Dick. Ch. Rep. 65, approved 10 Dick. Ch. Rep. 824; *East Jersey Water Co. v. Bigelow*, 31 Vr. 201.)

It will be noted that this opinion construes a constitutional provision requiring compensation to be made for the "taking" of property only. The provision is article 1, section 16, of the constitution of the State of New Jersey:

Private property shall not be taken for public use without just compensation.

In Connecticut the constitutional provision is (art. 1, sec. 11):

The property of no person shall be taken for public use without just compensation therefor.

In *Nolan v. New Britain* (69 Conn. 668), decided 1891, the defendant city discharged into a stream, known as Pipers Brook, "large quantities of acids, impure matter, sewage, and other noxious and impure substances," rendering the waters filthy, noxious, and unclean and depriving the plaintiff, a farmer, "of all use of the waters of said brook for watering his stock and for all domestic purposes," injuring the land for agricultural and pasturing purposes, injuring the plaintiff in his business of selling milk, and depriving him of the use of the brook for ice.

This was held by the Connecticut Supreme Court to be a taking of the plaintiff's property within the meaning of the constitution. The court said:

The right of the plaintiff to have the water of Pipers Brook flow through his land as it has been accustomed to flow (i. e. pure and uncontaminated) "is not an easement or appurtenance; but it is inseparably annexed to the soil." (*Wadsworth v. Tillotson*, 15 Conn. 366, 373.) To deprive the plaintiff of that part of his soil for the purposes named in that act, would be the taking of private property for public use, and the plaintiff would be entitled to have just compensation.

And again in the case of *Platt Bros. & Co. v. Waterbury* (72 Conn. 531), where the plaintiffs were owners of a manufacturing establishment, dwelling houses, and other buildings on the Naugatuck River, 2 miles below the defendant city, and sued and recovered damages and an injunction against the city discharging sewage into the stream, previous discharge having been such as to deprive the plaintiffs of

all use of the water of the river except for the purpose of furnishing power and having created such a nuisance that the employees left the plaintiffs' works, etc., the court said:

The injury described by the complaint is not a mere consequential damage, like that resulting wholly from the lawful use of one's own property, or the lawful exercise of governmental power; it is a direct appropriation of well-recognized property rights with the guaranty of the constitution, "The property of no person shall be taken for public use without just compensation therefor." (Citing *Nolan v. New Britain*, supra.)

And in *Donnell v. Greensboro* (164 N. C. 330, 80 S. E. 377), where the sewerage system of the defendant city created a nuisance to the injury of the plaintiff, who sued for an injunction and damages, it was held—

* * * That the damage arising from the impaired value of the property is to be considered and dealt with to that extent as a "taking or appropriation," and brings the claim within the constitutional principle that a man's property may not be taken from him even for the public benefit except upon compensation duly made. This decision, announced in *Little v. Lenoir* (151 N. C. 415), in an opinion by Associate Justice Manning, was reaffirmed and applied in the more recent cases of *Moser v. Burlington* (162 N. C. 141), *Hines v. Rocky Mount* (162 N. C. 400), and is sustained, we think, by the great weight of authority in the country. (*Winchell v. Waukesha*, 110 Wis. 101; *Bohan v. Port Jervis*, 122 N. Y. 18; *Joplin Mfg. Co. v. City of Joplin*, 124 Mo. 120; *Village of Dwight v. Hayes*, 150 Ill. 273; *Markwardt v. City of Guthrie*, 18 Okla. 32; *Plant v. Waterbury*, 72 Conn. 531.)

In Michigan the constitutional provision is (art. 13, sec. 1):

Private property shall not be taken by the public or by any corporation for public use without the necessity therefor being first determined and just compensation therefor being first made or secured in such a manner as shall be prescribed by law.

While it was not necessary to the decision of the case, the following language of Mr. Justice Stone of the Supreme Court of Michigan indicates the view of an eminent jurist to the effect that the unreasonable pollution of a stream constitutes a taking:

Undoubtedly the city has the right to make a reasonable use of the waters of the river as a riparian owner. But the court's attention has not been called to any statute giving the city the right to use Grand River below its limits as a sewer for the purpose of carrying away its waste and refuse in an unreasonable manner; and, if it were attempted by statute to give such a right, the statute would be unconstitutional, unless it first provided that the owners of property along the river should be compensated for damages to be first determined by constitutional methods for destruction of such property rights. (*Attorney General v. City of Grand Rapids et al.*, 175 Mich. 503, 141 N. W. Rep. 890, 50 L. R. A. (N. S.) 473, Ann. & Eng. Ann. Cas. 1915 A 968.)

A number of States, however, have constitutional provisions requiring compensation to be made not only for the taking, but for the damaging of private property for public purposes. Such is the lan-

guage of the constitution of Arizona, article 2, section 17; Arkansas, article 2, section 22; California, article 1, section 14; Georgia, article 1, section 3, paragraph 1; Minnesota, article 1, section 13; Mississippi, article 3, section 17; Missouri, article 2, section 21; Montana, article 3, section 14; Nebraska, article 1, section 21; New Mexico, article 2, section 20; Oklahoma, article 2, section 24; South Dakota, article 6, section 13; Texas, article 1, section 17; Utah, article 1, section 22; Virginia, article 4, section 58; Washington, article 1, section 16; West Virginia, article 3, section 9, and Wyoming, article 1, section 33.

It is, of course, apparent that in each State that has added to its constitutional provision against the taking without compensation the words prohibiting likewise the damaging of property without compensation, the scope of the provision is greatly enlarged. Indeed, it would seem that the use of this broader language must remove all doubt as to the necessity for compensation for serious injury to riparian owners caused by the pollution of a stream under legislative authority.

In the case of *Joplin Mining Co. v. City of Joplin* (124 Mo. 129), decided 1894, the mining company sued for an injunction against the building of a sewer, which, it was claimed, would pollute a stream upon which the plaintiff was a lower riparian proprietor. The defendant contended that it could not be enjoined because it was authorized by law to lay a sewer.

The court said:

Section 1541, Revised Statutes, 1879, provides: "Public sewers shall be established along the principal courses of drainage at such times, to such extent, of such dimensions, and under such regulations as may be provided by ordinance." And other sections give the city ample power to condemn private property for sewer purposes, the compensation to be ascertained by five freeholders to be appointed by the mayor. (Secs. 1524 and 1544.) The fair, and, we think, clear, implication of the language used in section 1541 is that the principal courses of drainage may be used for sewer purposes until sewers are constructed along the same. Indeed, these courses of drainage constitute the only receptacles for such matter. We, therefore, hold that the city of Joplin has the right and power to construct the public sewer in question so that it will discharge its contents into Joplin Creek. Whether the city can do this so as to create a public nuisance we need not inquire, for in our opinion the evidence makes out no such a case. It does, however, tend to show that the plaintiff's lands will be damaged by the discharge of the sewer matter into the creek. Whether this damage would amount to the taking of private property for public use is not important to inquire, for our constitution declares that private property shall not be taken or damaged without just compensation. If the discharge of the sewer matter into the creek will decrease the value of the plaintiff's land through which the creek runs, then the damage thus done is clearly within the constitutional provision, and the plaintiff must have compensation therefor. (*Van De Vere v. Kansas City*, 107 Mo. 34.)

And in the later case of *Smith v. Sedalia* (152 Mo. 283, 302, 303) the supreme court said:

The fact that sewers are necessary to a city and that the statute directs that they shall follow as nearly as practicable the natural drainage of the country, afford no justification to the action of a city in emptying its sewers on the land of an individual to his damage. Our constitution declares that private property shall not be taken or damaged without payment of just compensation. The legislature therefore could not, if it so intended, confer authority on a city to injure private property for the public good without first paying the damage. But subject to this qualification, private interest must yield to the public good. If it is a public necessity that the plaintiff's land be taken or damaged in order to dispose of the sewage of the defendant city, it may be so condemned according to law, but the city must first pay him the just compensation. Such condemnation can only be made in conformity to a proceeding prescribed by statute. The issues in this case do not call for an examination of the statute to ascertain whether or not provision has already been made for the condemnation of land outside the city limits for such purpose, but it is sufficient to say that until such provision is made, if it has not been, and until condemnation has been adjudged in accordance with such provision, or the city has by contract or prescription acquired the right to do so, it is liable for the damage caused by emptying its sewers into a natural stream flowing through private property. (*Cooley on Torts*, 2 ed. p. 603; *Joplin Consolidated Mining Co. v. Joplin*, 124 Mo. 129.)

But some of the States having a constitutional provision in substantially the same language as the Federal provision appear to take the position taken by the United States Supreme Court, namely, that to constitute a taking there must be practically a deprivation of all beneficial use and that a mere nuisance can not constitute a taking of property.

Thus in *Valparaiso v. Hagen* (153 Ind. 337) the Supreme Court of Indiana held that there was no taking of the plaintiff's property even though the discharge of sewage into the stream by the defendant city caused an overflow of the stream upon plaintiff's land so that the grass upon its premises was rendered worthless. This, the court held, was merely a lessening of the value of the estate and not a taking of property.

And in Ohio in the case of *Salem Iron Co. v. Hyland et al.* it was held that where plaintiff, a manufacturer, was apparently forced to abandon the stream entirely and seek the water supply for his boilers elsewhere, this was no taking of property, but only a nuisance. The court said:

That an injury to a property right of this character can not be legalized by the legislature does not affect the form of relief which should be awarded on account of an invasion of the right.

This language, used by the court in giving its reason for denial of the injunction, would indicate that the court would not recognize

the right of the legislature to grant immunity from liability to any municipality causing similar injury to a lower proprietor.

Indeed in the case of *City of Mansfield v. Balliett* (65 Ohio St. 451) the court had expressly held that the legislature could not authorize the discharge of sewage in such a way as to create a nuisance.

And the Supreme Court of Massachusetts does not hold municipalities liable for such injuries on constitutional grounds, but would probably place the same limitations upon the doctrine as does the United States Supreme Court. (See *Diamond v. North Attleborough*, 219 Mass. 587.)

BY THE GREAT WEIGHT OF AUTHORITY STATUTES WILL NOT BE CONSTRUED AS AUTHORIZING MUNICIPALITIES TO CREATE NUISANCES BY THE DISCHARGE OF SEWAGE, EVEN IN THOSE JURISDICTIONS WHERE THE CONSTITUTIONAL INHIBITION DOES NOT OBTAIN.

Statutes seldom or never attempt to expressly authorize the creation of a nuisance.

Of course, where the constitutional limitation is recognized it is a complete bar, and leaves no room for so construing the statute as to authorize a nuisance.

In the absence of the constitutional limitation the question becomes entirely one of construction, and by overwhelming weight of authority it is held that the fact that a municipality is authorized to install and operate a sewerage system is no reason for supposing that there was a legislative intent to authorize injury to lower proprietors. This rule is abundantly recognized and of long standing. It had its origin in England where the entire question is one of statutory construction, there being, of course, no constitutional limitations at all.

For example, in *Goldsmid v. Tunbridge Wells Improvement Commissioners* (L. R. 1 Ch. 349):

The defendants were commissioners for the improvement of Tunbridge Wells under a local act of the 9 and 10 Victoria, which gave full power to drain the town, to make sewers, and to turn any drain or sewer into a common ditch or watercourse.

In the execution of the powers of their act the defendants drained the greater part of the town into a brook called Culverley Brook, which afterwards passed through the plaintiff's estate and supplied the water of an ornamental lake in his park. * * * For the last three or four years as the town increased in size the amount of sewage flowing into the stream greatly increased and the plaintiff complained that the water had become foul and unwholesome.

In upholding the granting of an injunction, the court said:

There is not, so far as I can find, anything in the provisions of the act of Parliament, under which the defendants are acting to authorize them to commit a nuisance upon property beyond the range of their jurisdiction. They

could not possibly, so far as I can see, be justified in discharging the whole of the sewage of Tunbridge Wells bodily upon land not belonging to them and lying immediately beyond the limits to which their powers extend; and if they have no right to do this, neither can they, as it seems to me, have the right to send down the sewage upon an estate which, although nondistant, would be prejudicially affected by it.

See also—

Attorney General v. Cockmouth Local Board, L. R. A. Eq. 172.

Attorney General v. Leeds, L. R. 5 Ch. 583.

In *Winchell v. Waukesha* (110 Wis. 101, 85 N. W. 668, 84 Am. St. Rep. 902), where the sewage discharged by the defendant city into the Fox River caused offensive and disagreeable odors and rendered the water unfit for bathing and watering stock at the point where it flowed past plaintiff's premises, the Supreme Court of Wisconsin said:

It has been declared by this court in *Harper v. Milwaukee* (30 Wis. 365, 372) that "the general rule of law is that a municipal corporation has no more right to erect and maintain a nuisance than a private individual possesses, and an action may be maintained against such corporation for injuries occasioned by a nuisance for which it is responsible in any case in which, under like circumstances, an action could be maintained against an individual." Again, in *Hughes v. Fon du Lac* (73 Wis. 380, 41 N. W. 407), it is said: "A municipal corporation is no more exempt from liability in case it creates a nuisance, either public or private, than an individual.

The court then took up the contention of the defendant that the doctrine of these earlier cases had been modified by later decisions in other States and that the city was immune from liability because in discharging the sewage into the stream along the line of natural drainage it was but performing a governmental function under the general legislative authority given to municipalities to construct sewer systems, and that the damage resulting was consequential and not actionable. But the court denied that such general authority could be construed as granting any such immunity. Said the court:

When, if ever, the legislature shall enact that streams generally, or any streams, shall be used as sewers without liability to the owners of the soil through which they run, the question of constitutional protection to private rights may be forced upon the courts for decision. Until such enactment is made, however, in clear and unambiguous terms, we shall be slow to hold by inference or implication that it has been made at all. The right of the riparian owner to the natural flow of water substantially unimpaired in volume and purity is one of great value, and which the law has nowhere more persistently recognized and jealously protected than in Wisconsin. Not alone the strictly private right, but important public interests, would be seriously jeopardized by promiscuous pollution of our streams and lakes. Considerations of esthetic attractiveness, industrial utility, and public health and comfort are involved. Amid this conflict of important rights, we can not believe that the legislature concealed, in words merely authorizing municipalities to raise and expend money for the construction of sewers, a declaration of policy that each munic-

pality might, in its discretion, without liability to individuals, take practical possession of the nearest stream as a vehicle for the transportation of its sewage in crude and deleterious condition.

In *City of Mansfield v. Balliett* (65 Ohio St. 451), although the opinion allows relief principally upon the ground that the injury should be construed as an invasion of the defendant's property in a manner forbidden by the constitution of the State, yet says:

There is a line of authorities which sustain the right of action in cases like the one before us, and place it upon the ground that such acts as those complained of here constitute a nuisance, which municipal corporations can not, any more than individuals, be allowed to create or maintain—

and cited a number of authorities and continued:

The right of the plaintiff to the relief awarded him by the judgments of the lower courts is sustained by the case of *Rhodes v. City of Cleveland* (10 Ohio, 160). That suit was brought against the city to recover damages for so cutting its drains as to cause the water to overflow and wash away the plaintiff's lands. The trial court charged the jury that the plaintiff could not recover "unless he showed either that the city acted illegally or, if within the scope of authority, that they acted maliciously." In reversing the judgment founded on the verdict for the defendant, this court held that "corporations are liable like individuals for injuries done, although the act was not beyond their lawful powers." The grounds of the decision are stated in the opinion by Lane, C. J., as follows: "That the rights of one should be so used as not to impair the rights of another is a principle of morals which, from very remote ages, has been recognized as a maxim of law. If an individual, exercising his lawful powers, commit an injury, the action on the case is the familiar remedy; if a corporation, acting within the scope of its authority, should work wrong to another, the same principle of ethics demands of them to repair it, and no reason occurs to the court why the same remedy should not be applied to compel justice from them."

That decision is founded upon the broad principles of common justice and constitutional right. It is applicable to and decisive of this case * * *.

The case of *Carmichael v. City of Texarkana* (94 Fed. Rep. 561) is another case in which it is held that legislative authority to construct sewers can not be construed as authorizing the creation of a nuisance.

The case of *Markwardt v. City of Guthrie* (18 Okla. 32) is one in which a number of cases are carefully reviewed, and it is held that legislative authority to construct a sewerage system did not authorize the defendant city to pollute the stream to the injury of the plaintiff. While the constitutional question was discussed at some length, the holding appears to be based rather upon the same reasoning as was adopted in *Winchell v. Waukesha*, namely, that there can be no implied authority to create a nuisance. The opinion indicates, however, that the court would probably deny the power to authorize a nuisance if the legislature should attempt it.

In the case of *Jones et al. v. Sewer District No. 3 et al.* (177 S. W. 888), decided June 17, 1915, condemnation proceedings had been had under legislative authority and property had been condemned and rights taken for the purpose of installing and maintaining a sewerage system and septic tank to purify and discharge the sewage of the city of Rogers. The effluent from the disposal works was discharged into a watercourse which flowed through the lands of the plaintiff, who alleged that a nuisance resulted, and brought suit for an injunction. The contention of the plaintiff was sustained, the court holding that the statutory authority, and even the condemnation proceedings pursuant thereto, must be construed as having established the right only to operate the system in a proper manner and that they were still liable for the creation of a nuisance.

The Supreme Court of Indiana has taken the opposite position. In the case of *City of Valparaiso v. Hagen* (153 Ind. 337) where the lower court had granted an injunction against the defendant city, prohibiting its discharge of sewage into Salt Creek, the case was reversed by the supreme court upon the ground that the legislature, having conferred upon municipalities the power to construct sewers and outlets, "the granting of such powers imposes the duty to exercise them in all needful cases," and further that—

* * * There is no pretense that there is any other possible outlet or practical means of disposing of sewage, or that the sewer was unskillfully or negligently constructed.

Hence, then, to forbid a discharge of sewage into Salt Creek is to deny to the city the right to discharge it anywhere, and thus leave it without the ordinary means of sanitation. Surely it is not the law that a salutary statute, essential to the health and welfare of the public, may be thus nullified by exhibiting a damage to private right. The sewage must be dispatched or the city abandoned. The place adopted for the outpour is that provided by nature and can not be had elsewhere. The facts present a case wherein the principle of the greatest good to the greatest number must be permitted to operate, and private interest yield to the public good, and if the erection has been skillfully performed, and without negligence, as is shown to be the fact by the record, and in a way to do the least¹ mischief, it must be held to be a lawful exercise of power that equity will not restrain. (*Barnard v. Sherley*, 135 Ind. 547, 24 L. R. A. 568; *City of Richmond v. Test*, 18 Ind. App. 482, 501; *Merrifield v. City of Worcester*, 110 Mass. 216.)

And it was held that there was no taking of private property even though the stream was caused to overflow with the result that the grass upon the premises of the appellee was rendered worthless. This, the court held, was merely a lessening of the value of the estate and not a taking of property.

It will not do to say that the stream and appellee's land lying along the margins of Salt Creek should have been condemned by the city to the right to dispatch sewage along the stream before proceeding to do so. According to the statement of appellant's counsel the premises of appellees, alleged to be af-

¹ Decision reads "best."

fects, are situated from 2 to 10 miles by the stream from the corporate limits of the city; and, if the city is required to go so far to recompense sewage effect, "where may it stop short of the sea?" Appellant had lawful authority to exercise the right of eminent domain in securing an outlet for its sewage, but no such authority exists as will permit it to seize upon the stream and its margins to relieve consequential damages. (*City of Richmond v. Test*, 18 Ind. App. 482, 500, and authorities cited.)

Of the judgment of the lower court, the supreme court said:

The judgment is anomalous in that it expressly authorizes appellant to construct the proposed extension through the marsh to Salt Creek, but forbids forever the pollution of the waters of the stream.

It is apparent that in this case, which was decided in 1899, the record did not contain proof that the difficulty presented could be overcome by the adoption of purification methods. The opinion clearly indicates that in the view of the court no such alternative is open to the city, but that either the nuisance to the plaintiff must be continued or that the city must suffer severely from a sanitary point of view "or the city" be "abandoned."

And to the same effect is the *City of Richmond v. Test* (18 Ind. App. 482). There the city of Richmond discharged its sewage into Whitewater River and caused serious damage to the plaintiff, who was a proprietor of a woolen factory, a mile south of the city, and it was held that inasmuch as the city was authorized by law to construct sewers, the injury, of which the plaintiff complained, was only a consequential damage resulting from the proper exercise of a governmental function and that there was no liability on the part of the city.

But the Supreme Court of Indiana has displayed a very strong disposition to depart from the doctrine in these cases. In the case of *Penn American Plate Glass Co. v. Schwinn* (177 Ind. 615, 98 N. E. 715), decided May 28, 1912, the following language is used:

There is, perhaps, one line of distinction, which in the opinion of the writer of this opinion, is unsound, and that is an exception in favor of cities making avail of streams for sewerage without liability. That doctrine grew up from a supposed necessity; but the same reasons which seemed to be grounds for the exception to the rule in regard to the pollution of streams by cities are the very ones which must sooner or later reverse it. It is a matter of common knowledge everywhere, and the subject of recent legislation in this State, that the streams of pure and limpid water, which formerly traversed the State, have become cesspools of filth and breeders of disease and polluted to nausea; and we must certainly, and the sooner the better for the State and its inhabitants, take steps necessary to the removal of sewage from our streams and their restoration to their natural condition; and certainly such exception as now applies to cities should never be extended to manufacturing or commercial enterprises, if it be retained as to the cities. Two marked cases of the excepted class are *City of Valparaiso v. Hagen* (1898, 153 Ind. 337) and the cases upon which it is based, recognized in *Weston Paper Co. v. Pope* (155 Ind. 400) and *City of Richmond v. Test* (1897, 18 Ind. App. 482), both of which are, in the opinion of the writer, based upon unsound premises. They

are grounded upon the supposed necessity of the rule, following the Sander-son case in Pennsylvania and *Barnard v. Sherley* (135 Ind. 547, 24 L. R. A. 568). The rule of necessity thus disclosed must, in and of itself, inevitably force just the opposite doctrine in the interest of the public health, the very thing supposed to be subserved by the rule, when it is daily becoming more and more apparent that the sewage into the streams is a real nuisance to the public health, and it is not a necessity, because it can be otherwise provided for with practicability and assured safety to the public health.

Far preferable and more consistent, both with private rights and the public interest, that the streams shall be preserved without contamination, and as arteries adequate to carry the floods of water continually increasing in quantity and velocity by reason of the agricultural drainage precipitating them quickly into streams and that no supposed rule of necessity in order to the carrying on of a business, on account of its usefulness or necessity, or that it can not be carried on without producing these results, nor the fact of skill and care to prevent it, or on account of the amount involved, can be allowed as an exception, nor can the riparian owner below be required to protect himself; the right is an incident of the title, and such is the law of this State.

And the holding in *Valparaiso v. Hagen* and in *City of Richmond v. Test* has also been noticed and criticized by the courts of a number of other States—for example, in *Winchell v. Waukesha* (110 Wis. 101, 85 N. W. 668, 84 Am. St. Rep. 902), where it was said:

The right of the riparian owner to the natural flow of water substantially unimpaired in volume and purity is one of great value, and which the law has nowhere more persistently recognized and jealously protected than in Wisconsin. Not alone the strictly private right, but important public interests, would be seriously jeopardized by promiscuous pollution of our streams and lakes. Considerations of aesthetic attractiveness, industrial utility, and public health and comfort are involved. Amid this conflict of important rights, we can not believe that the legislature concealed, in words merely authorizing municipalities to raise and expend money for the construction of sewers, a declaration of policy that each municipality might, in its discretion, without liability to individuals, take practical possession of the nearest stream as a vehicle for the transportation of its sewage in crude and deleterious condition. At that stage in its logic we can not agree with the Indiana court in *Valparaiso v. Hagen* (153 Ind. 337). The authority granted to municipalities is to construct sewers, but subject to the general legal restrictions resting upon such corporations forbidding invasion of private rights by creation of nuisance or otherwise. This view of the legislative purpose is enforced by the consideration that, although liquid sewage must flow off along the general drainage courses of the vicinity, it is by no means physically necessary that it should carry with it the solids in an offensive or unhygienic condition. (*Hackstuck v. Keshinn Imp. Co.* 66 Wis. 439, 29 N. W. 240.) It is a matter of common knowledge and of proof in this case that there are practical methods for the decomposition and practical destruction of such solids before delivering them into open watercourses; the most modern method, as explained in septic bacteria tanks, whereby the decomposition and resolution into offensive and innocuous fluids, gas, and mineral solids is greatly expedited * * *.

And in *Platt Bros. & Co. v. Waterbury* (72 Conn. 531) it was said:

The theory of the defendant that the necessities of a city may not only justify the taking of riparian rights but the taking without compensation, seems

to find support in some Indian cases. (*Richmond v. Test*, 18 Ind. App. 482; *Barnard v. Sherley*, 135 Ind. 547; *Valparaiso v. Hagen*, 153 Id. 337.) We do not find other cases that take this extreme ground. The right to compensation can not be questioned in this State.

While it is quite probable that the Indiana courts would hesitate to reverse the holding that the pollution of a stream by a municipality, even to the extent of causing serious injury to the lower riparian proprietor, would constitute a taking of property, yet it is believed that the expressions found in the later cases would indicate that municipalities would be held liable upon the ground of nuisance, wherever such damage was caused as a result of a failure to adopt scientific and effective methods of purification.

The Massachusetts Supreme Court appears to take the view that the legislature has power to permit the discharge of sewage into streams even to the extent of creating a nuisance, but that statutes will not be construed as giving such power unless a necessary result of the exercise of that power would be the creation of a nuisance; that is to say, all presumption is against the intent of the legislature to permit the creation of a nuisance by the same, but, on the other hand, if it gives to the city a power that can not be exercised without the creation of a nuisance, then the power is to be upheld and the nuisance permitted.

In *Morse v. City of Worcester* (139 Mass. 390), the court said:

In the case at bar, the legislature authorized the city of Worcester to use Mill Brook as a sewer; by necessary implication, the statute authorized it to empty its sewage into Blackstone River; but we can not presume that it was the intention of the legislature to exempt the city from the obligation to use due care in the construction and management of its works, so as not to cause any unnecessarily injurious consequences to the rights of others. If it is practicable to use any methods of constructing the sewer, and, as a part of the construction, of purifying the sewage at its mouth, at an expense which is reasonable, having regard to the nature of the work and the magnitude and importance of the interests involved, it is the duty of the city to adopt such methods.

The case comes before us in such a form that we can do no more than state the general principles which must govern the hearing. The bill alleges negligence in constructing the sewer, and in failing to use reasonable precautions in purifying the sewage. We can not anticipate what negligence may be proved. Negligence in this, as in most other cases, is largely a question of degree. If the plaintiff shows that, in constructing the sewer, as in adopting the brook to its use as a sewer, the defendant did the work in an improper manner, the bill can be maintained. So, if he proves that the defendant, in constructing the sewer, could have adopted, at an expense which is reasonable, a system of cesspools, or some other methods of purification, at the mouth of the brook, it may be that his bill can be maintained. We can not say in advance that some such method may not be practicable, and within the duty of the defendant to use reasonable precautions in doing the work authorized by the statute to prevent a nuisance. This is a question of fact. The allegations of the bill are so broad that the demurrer can not be sustained. The

question whether, upon the existing facts and conditions, the defendant has been guilty of any negligence, can not be determined until such facts are developed by the evidence at the hearing.

This is all that is necessary for the decision of this case. But, to prevent misunderstanding we add that if the only mode of preventing the pollution of the river is found to be by the adoption of an extensive system of purification, independent of the construction of the sewer, requiring the taking of large tracts of land, we must not be understood as implying that it is within the duty or the power of the defendant to do this.

The power to convert the brook into a sewer carries, by implication, the power to expend money for any plan of work which is an incident or part of the main work authorized by the statute, but it would seem that the statute does not give the defendant power to take lands or expend money for an independent system of sewage purification. If such system is rendered necessary by the construction of the sewer, the remedy must be sought from the legislature, which can best adjust and settle the conflicting rights and interests of the public, and of the riparian owners upon the rivers.

In *Moody v. Village of Saratoga Springs* (17 App. Div. (N. Y.) 207) plaintiff brought suit for an injunction to restrain the defendant city from discharging sewage into the Kayaderosseras Creek, near the plaintiff's home, causing the stream and air to become polluted to the plaintiff's injury. Damages were also asked. Plaintiff was awarded an injunction and also damages. The judgment was sustained by the appellate division. The injury to the plaintiff was admitted, but the defendant city denied liability upon the ground that chapter 149 of the laws of 1885 authorized commissioners to extend the main sewer of the village to a new terminus to be selected by the commissioners, and that such extension has been made by the commissioners with the result that the sewage was thereafter discharged into the creek near the plaintiff's premises producing the nuisance complained of. It was contended that this extension of the sewer was the act of the State and not of the village, and that the latter could not, therefore, be liable, but the court held otherwise. It was conceded that had the statute been enacted to effect some purpose beneficial to the State generally and "foreign to any corporate purpose or special benefit to the village of Saratoga Springs or its people, the State, and not the village, should be answerable for the resulting nuisance to the plaintiff."

But (said the court) it is made a part of the corporate duty of the village of Saratoga Springs, by various acts, to provide and maintain a system of sewers, and this act of 1885, by its third section, while it authorizes the commissioners "to construct an extension of the main sewer in such manner as they shall deem expedient," significantly adds the words, "and for the interests of the village of Saratoga Springs." Other parts of the act indicate that the purpose of the sewer extension was to promote such interests, and the nature of the case imports such a purpose.

Moreover, the village has adopted the extension which the act commits to its care and custody. This is the fair inference from the evidence.

For the six years following the extension the village had used this extension and permitted its sewage to be conveyed by it and discharged into the creek near the plaintiff's house and premises. Within the doctrine of the above cases and others, the village is liable. (N. Y. Central & H. R. R. Co. v. City of Rochester, 127 N. Y. 591; Stoddard v. Village of Saratoga Springs, id. 261; Chapman v. City of Rochester, 110 id. 273; Noonan v. City of Albany, 79 id. 470; Bolton v. Village of New Rochelle, 84 Hun, 281.)

The defendant urges that, as the extension was authorized by the act and was not negligently or unskillfully executed, the defendant is not liable. The plaintiff does not complain of the construction but of the use which is made of it to his injury. The act authorizing the extension undoubtedly authorizes its use, but not such use as results in a nuisance. (Selfert v. City of Brooklyn, 101 N. Y. 136; N. Y. C. & H. R. R. Co. v. City of Rochester, supra; Hooker v. City of Rochester, 37 Hun, 181; affirmed, 107 N. Y. 676.)

Assuming the lawfulness of the construction and the right to its use, the use, as was said in Booth v. R., W. & O. T. R. R. Co. (140 N. Y. 267, 275), after commenting upon many cases, must not be to the injury of any legal rights of another. The plaintiff's legal right to air and water in the purity that existed before the defendant polluted them by sewage can not be questioned. If the defendant by any right of eminent domain can take the right from the plaintiff, it must do so upon making just compensation.

The judgment should be affirmed, with costs.

TABLE OF CASES.

	Page.
Alabama Consolidated Coal & Iron Co. v. Turner.....	68
Albany, Noonan v.....	84, 132
Alden, Serley v.....	53
Alger, Comm. v.....	89, 92, 100, 106
Allard, Jacobs v.....	27, 28
Allen, Pennoyer v.....	43
Alta Land Co. v. Hancock.....	77
Altopna, Good v.....	52
American Strawboard Co., Indianapolis Water Co. v.....	21, 23, 42, 48, 58, 61
American Woolen Mills Co., Parker v.....	13, 31, 48, 51, 58, 62, 63
Anchor Brewing Co. v. Dobbs Ferry.....	81
Anderson, Senior v.....	53
Andrew, Canfield v.....	59, 66
Anthony, Handy v.....	103
Apalache, Mason v.....	36, 119
Arlington Mills Co., Jackman v.....	15, 48, 80
Arndt, Shields v.....	57
Atkin v. Kansas.....	93
Atlantic De Laine Co., Richmond Mfg. Co. v.....	23, 25, 58
Attorney General v. Birmingham, Tame & Ren District Drainage Board.....	112
Attorney General v. Cockmouth Local Board.....	125
Attorney General v. Grand Rapids.....	68, 70, 71, 74, 78, 79, 121
Attorney General v. Jamaica Pond Aqueduct Corpn.....	67
Attorney General v. Leeds.....	125
Attorney General v. Richmond.....	71
Auburn Gas Light Co., Carhart v.....	58
Aurora, Walker v.....	111
Bailey v. N. H. & N. Co.....	45
Bainard v. Newton.....	79
Baker, Crabtree v.....	68
Balliett, Mansfield v.....	124, 126
Balto. & P. R. Co. v. Fifth Baptist Church.....	42, 43
Baltimore, Boehm v.....	94
Baltimore, Deems v.....	94
Baltimore v. Warren Mfg. Co.....	10, 48
Bankier Distillery Co., Young v.....	33, 34
Bank of Columbia, Renner v.....	45
Barber, Minnesota v.....	93
Barclay v. Comm.....	76
Bard v. Yohn.....	54
Bargus, State v.....	103
Barnard v. Shirley.....	41, 127, 129, 130
Barnstable, Hinckley v.....	45
Barton v. Union Cattle Co.....	14, 28, 31, 42, 50

	Page.
Baxendale v. McMurray.....	59, 70
Beach v. Sterling Iron & Zinc Co.	14, 32, 34, 47, 58, 67, 120
Bealey v. Shaw.....	70
Beidler v. Sanitary District.....	9
Belknap v. Trimble.....	66
Bigelow, East Jersey Water Co. v.....	120
Birmingham, Tame & Ren District Drainage Board, Attorney General v.....	112
Blackburne v. Somers.....	71
Blaisdell v. Stephens.....	55, 59
Blum, New York v.....	11, 14, 96, 112
Blunt v. Hay.....	60
Board of Health, Miles City v.....	95, 100, 108
Boehm v. Balto.....	94
Bohan v. Port Jervis.....	121
Bolling Springs Bleaching Co., Holman v.....	9, 24, 57, 58, 63, 66
Bolton v. New Rochelle.....	132
Bonte v. Postel.....	54
Booth v. B. W. & O. T. R. R. Co.....	132
Booth v. Shepherd.....	103
Boston Disinfecting Co., Train v.....	115
Boston Duck Co., Gould v.....	44
Boston Rolling Mills v. Cambridge.....	71
Bowen v. Wendt.....	71
Bowling Coal Co. v. Ruffner.....	11, 32, 52
Bowman v. Humphrey.....	54
Boyce's Exrs. v. Grundy.....	66
Boyd v. Granite Co.....	36
Boyd v. Schreiner.....	61
Boyle, Foreman v.....	52, 53
Bragg, Crocker v.....	62
Brinsop Hall Coal Co., Pennington v.....	48
Briston, Mansfield v.....	56
Broadbelt, State v.....	94
Brockney, Thomas v.....	52, 62
Brodhine v. Revere.....	115
Bromly, Woodbury v.....	80
Brookline v. Mackintosh.....	18, 95
Brooklyn, Mills v.....	81
Brooklyn, Seifert v.....	132
Brown, Cadigan v.....	66
Brown, Draper v.....	55
Brown v. Gold Coin Mining Co.....	28
Brumfitt, Thorpe v.....	59
Buccleugh v. Coman.....	59
Bunker Hill & Sullivan Mining & Coal Co., McCarthy v.....	40
Burden, Stein v.....	68
Burlington, Moser v.....	121
Bush v. Western.....	57
Butte City Water Co., Talbott v.....	101
Butte v. Paltrovich.....	101
Cadigan v. Brown.....	66
Cambridge, Boston Rolling Mills v.....	71
Campbell v. Seaman.....	67

	Page.
Canandaigua Gas Light Co., Cartwright v.....	109
Canfield v. Andrew.....	59, 66
Carhart v. Auburn Gaslight Co.....	58
Carmichael v. Texarkana.....	126
Carnegie, Lentz v.....	42
Carnegie, Robb v.....	34, 42
Cartwright v. Canandaigua Gas Light Co.....	109
Case, Hazeltine v.....	86
Catonsville Water Co., Helfrich v.....	12, 14, 44, 87, 95, 99
Champaign Co. v. Church.....	94
Chapman v. Rochester.....	52, 73, 75, 79, 132
C. H. & D. R. Co. v. Sullivan.....	94
C. H. & D. Ry. Co. v. Troy.....	94
Chester, George v.....	111
Chipman v. Palmer.....	48, 53, 55, 59
Church, Champaign Co. v.....	94
Cincinnati, Sandusky & Cleveland R. Co. v. Cook.....	94
Cincinnati v. Steinkamp.....	103
Clark v. Penna. R. R. Co.....	62
Clark v. Stewart.....	66
Cleveland v. N. J. Steamboat Co.....	45
Cleveland, Rhodes v.....	126
Cleveland v. Standard Bag, etc., Co.....	50
Clifton Iron Co. v. Dye.....	52
Clowes v. Staffordshire Potteries Co.....	66
Coal Co., Stevenson v.....	25
Cockmouth Local Board, Attorney General v.....	125
Coe v. Winnipiseogee Mfg. Co.....	66
Coglan, Welch v.....	94, 116
Colebrook, Patterson v.....	46
Collerd, McAndrews v.....	43
Collins v. Waltham.....	80
Columbus & Hocking Coal & Iron Co. v. Tucker.....	34, 45, 51
Columbus Co. v. Taylor.....	32
Coman, Buccleugh v.....	59
Comm. v. Alger.....	89, 92, 100, 106
Comm., Barclay v.....	76
Comm. v. Jacobson.....	115
Comm. v. McCormick.....	37
Comm. v. Moorehead.....	101
Comm. v. Sisson.....	95, 99, 100, 115
Comm. v. Straight Creek Coal & Coke Co.....	109
Comm. v. Tewksbury.....	92, 106
Comm. v. Upton.....	71, 111
Concord, Hubbard v.....	46
Cook, Cincinnati, Sandusky & Cleveland R. Co. v.....	94
Cook, Portland v.....	101
Corning v. Troy Iron & Nail Factory.....	62
Cox v. Howell.....	11
Crabtree v. Baker.....	68
Crane v. Roselle.....	80
Cristensen, Crowley v.....	93
Crocker v. Schureman.....	45

	Page.
Crooker v. Bragg.....	62
Crossley v. Lightowler.....	48, 59
Crowley v. Cristensen.....	93
C. S. & C. Ry. Co., L. S. & M. S. Ry. Co. v.....	94
Cunningham, People v.....	71
Cutter v. Powell.....	45
Daley v. Watertown.....	81
Davis v. Lambertson.....	57
Day, Dunham v.....	45
Day v. Louisville Coal & Coke Co.....	18, 54
Débris Case.....	55
De Donato v. Morrison.....	54
Deems v. Balto.....	94
De Held, Soltan v.....	63
Dennis v. State.....	49
Diamond v. North Attleborough.....	119, 124
Diamond Mills Paper Co., State Board of Health v.....	95, 104, 107
Dilworth, Sloggy v.....	55
Dixon Pure Ice Co., Sandusky Portland Cement Co. v.....	58
Dobbs Ferry, Anchor Brewing Co. v.....	81
Dolby v. Heist.....	45
Donk Bros. Coal & Coke Co., Tetherington v.....	9, 52
Donnell v. Greensboro.....	40, 121
Dorr, Sprague v.....	90, 99, 100
Drake v. Lady Ensley Coal, Iron & Ry. Co.....	34, 52
Draper v. Brown.....	55
Dresser, Meyer v.....	45
Dumont v. Kellogg.....	44
Dunham v. Day.....	45
Durham v. Eno Cotton Mills.....	92, 106, 108
Dwight v. Hayes.....	65, 74, 121
Dwinel, Veazle v.....	71
Dye, Clifton Iron Co. v.....	52
East Jersey Water Co. v. Bigelow.....	120
Elder v. Lykens Valley Coal Co.....	52
Electric Traction Co., Wiest v.....	54
Elk River Mill & Lumber Co., People v.....	78
Elliott v. Ferguson.....	26
Embrey v. Owen.....	62
Emery v. Erskine.....	60
Eno Cotton Mills, Durham v.....	92, 106, 108
Erskine, Emery v.....	60
Eufaula Water Co., Ulbricht v.....	63, 68, 86
Everson, Simmons v.....	55
Full River Iron Works Co., Sherman v.....	48
Fargo, Judd v.....	45
Ferguson, Elliott v.....	26
Fich v. Resbridger.....	57
Fifth Baptist Church, Balto. & P. R. Co. v.....	42, 43
Fisk, Franklin v.....	82
Fisk, Sewall's Falls Bridge Co. v.....	45
Flagg v. Worcester.....	80
Flet River Booming Co., Middleton v.....	60

TABLE OF CASES.

137

	Page.
Fletcher v. Rylands.....	82
Fond du Lac, Hughes v.....	73, 125
Foreman v. Boyle.....	52, 53
Franklin v. Flak.....	82
Gago, Webber v.....	66
Gallagher v. Kemmerer.....	54
Gardner v. Newburgh.....	57, 66
Garrett Park, Sprigg v.....	94
Garwood v. N. Y. Cent., etc., R. Co.....	62
Geiger, Prentice v.....	48, 60
Gentsch v. State.....	103
George v. Chester.....	111
Germantown Water Co., McCollum v.....	76
Geurkink v. Petaluma.....	53
Gifford, Reid v.....	60
Gladfelter v. Walker.....	47, 62
Gold Coin Mining Co., Brown v.....	26
Gold Run, etc., Mining Co., People v.....	71
Goldsmid v. Tunbridge Wells Improvement Commissioners.....	68, 70-74, 124
Good v. Altoona.....	52
Gould v. Boston Duck Co.....	44
Grand Rapids, Attorney General v.....	68, 70, 71, 74, 78, 79, 121
Grand Rapids Booming Co. v. Jarvis.....	119
Granite Co., Boyd v.....	36
Green Bay & Miss. Canal Co., Pumpelly v.....	117
Greene v. Nunemacher.....	57
Greensboro, Donnell v.....	40, 121
Greenville, State Board of Health v.....	63, 101, 116
Grey v. Paterson.....	77, 119
Griesner, Kauffman v.....	15
Griffin, State v.....	80, 104
Grinnell, Thomas v.....	89
Griswold, Parker v.....	62
Grundy, Boyce's Exrs. v.....	66
Gurry, State v.....	116
Guthrie, Markwardt v.....	75, 121, 126
Hackstack v. Keshinn Imp. Co.....	129
Hagen, Valparaiso v.....	123, 127, 128, 129, 130
Halle Gold Mining Co., Williams v.....	36, 119
Hall, Mills v.....	71
Hall, Sellick v.....	55
Hall v. Siegel.....	110
Hamilton, Tenn., Coal, Iron & Coke Co. v.....	18, 35, 49, 52
Hammon v. Zahner.....	62
Hammond, Honsee v.....	11, 46, 52
Hammond, Inglebright v.....	45
Hancock, Alta Land Co. v.....	77
Handy v. Anthony.....	103
Hannibal, Martinowsky v.....	55
Hardy, Holden v.....	93
Harley v. Merrill.....	54
Harper v. Milwaukee.....	73, 125
Harris v. Mackintosh.....	67

	Page.
Haupt's Appeal.....	86
Hay, Blunt v.....	60
Hay, Murray v.....	60
Hayes, Dwight v.....	65, 74, 121
Hays v. Waldron.....	21, 46, 61
Hazeltine v. Case.....	86
Health Department v. Rector.....	101
Heeg v. Licht.....	43
Heist, Dolby v.....	45
Helena v. Kent.....	101
Helfrich v. Catonsville Water Co.....	12, 14, 44, 87, 95, 96
Henderson v. Robinson.....	71
Herrington, Peck v.....	80
Hill v. Smith.....	48
Hill v. Standard Mining Co.....	25
Hillman v. Newington.....	59
Hinckley v. Barnstable.....	45
Hines v. Lockport.....	81
Hines v. Rocky Mount.....	121
Holden v. Hardy.....	93
Holsman v. Bolling Springs Bleaching Co.....	9, 24, 57, 58, 63, 66
Honsee v. Hammond.....	11, 46, 52
Hooker v. Rochester.....	132
Horan, McCormick v.....	15
Hoskell v. New Bedford.....	75
Hover, Straight v.....	30, 52
Howell, Cox v.....	11
Howell v. McCoy.....	76
Hubbard v. Concord.....	46
Hughes v. Fond du Lac.....	73, 125
Hughland Ditch Co., Miller v.....	55
Hulbert, People v.....	12, 14, 85, 95, 96
Humphrey, Bowman v.....	54
Hyland, Salem Iron Co. v.....	29, 41, 123
Hyman, State v.....	94
Illinois, Missouri v.....	67
Improvement Co., Lull v.....	54
Indianapolis Water Co. v. American Strawboard Co.....	22, 23, 42, 48, 58, 61
Inglebright v. Hammond.....	45
Irvine v. Wood.....	55
Jackman v. Arlington Mills Co.....	15, 48, 80
Jacobs v. Allard.....	27, 28
Jacobson, Comm. v.....	115
Jacobson v. Massachusetts.....	93, 94, 115
Jamaica Pond Aqueduct Corp., Attorney General v.....	67
Jarvis, Grand Rapids Booming Co. v.....	119
Jenkins v. Ity.....	16
Johns v. Stevens.....	62
Jones v. Sewer District No. 3.....	127
Joplin, Joplin Consolidated Mining Co. v.....	75, 121, 122, 123
Joplin Consolidated Mining Co. v. Joplin.....	75, 121, 122, 123
Judd v. Fargo.....	45
Kansas, Atkin v.....	93

	Page.
Kansas, <i>Mugler v.</i>	98
Kansas City, Van De Vere <i>v.</i>	122
Kauffman <i>v.</i> Griesner	15
Kellogg, Dumont <i>v.</i>	44
Kemmerer, Gallagher <i>v.</i>	54
Kenoway, Noble <i>v.</i>	45
Kent, Helena <i>v.</i>	101
Kerr Salt Co., Strobel <i>v.</i>	11, 34, 44, 48, 49, 58, 60
Keshina Imp. Co., Hackstack <i>v.</i>	129
Kewanee <i>v.</i> Otley	9
Kirk, People <i>v.</i>	111
Knox, Rideout <i>v.</i>	100
Kraver <i>v.</i> Smith	69, 71
Krayer, La France <i>v.</i>	54
L. & N. R. Co., West <i>v.</i>	70
Lady Easley Coal, Iron & Ry. Co., Drake <i>v.</i>	34, 52
Lafin & Rand Powder Co. <i>v.</i> Tearney	43
La France <i>v.</i> Krayer	54
La Grange, Robb <i>v.</i>	80
Lambertson, Davis <i>v.</i>	57
Lansing, Scofield <i>v.</i>	60
La Pell, People <i>v.</i>	113
Lawrence, Lockwood Co. <i>v.</i>	21, 24, 55, 58, 59, 60, 62, 65
Leeds, Attorney General <i>v.</i>	125
Lenoir, Little <i>v.</i>	121
Lentz <i>v.</i> Carnegie	42
Lewis <i>v.</i> Stein	72, 91, 95
Licht, Heeg <i>v.</i>	43
Lightowler, Crossley <i>v.</i>	48, 59
Little <i>v.</i> Lenoir	121
Little Schuylkill Nav. R. & C. Co. <i>v.</i> Richards	54, 55
Littleton <i>v.</i> Richardson	45
Livingston <i>v.</i> McDonald	83
Lockport, Hines <i>v.</i>	81
Locks & Canals <i>v.</i> Lowell	75
Lockwood Co. <i>v.</i> Lawrence	21, 24, 55, 58, 59, 60, 62, 65
Lombard, Merrifield <i>v.</i>	18, 21, 58, 66, 67, 70
Long <i>v.</i> Swindell	55
Loomis, Olmstead <i>v.</i>	66
Louisville Coal & Coke Co., Day <i>v.</i>	18, 54
Lowell, Locks & Canals <i>v.</i>	75
L. S. & M. S. Ry. Co. <i>v.</i> C. S. & C. Ry. Co.	94
L. S. & M. S. R. R. Co. <i>v.</i> Rouch	110
Lull <i>v.</i> Improvement Co.	54
Lykens Valley Coal Co., Elder <i>v.</i>	52
Lynah, United States <i>v.</i>	117, 119
Lyon <i>v.</i> McLaughlin	58
McAndrews <i>v.</i> Collierd	43
McCarthy <i>v.</i> Bunker Hill & Sullivan Mining & Coal Co.	40
McCollum <i>v.</i> Germantown Water Co.	76
McCormack, Tiffin <i>v.</i>	43
McCormick, Comm. <i>v.</i>	37
McCormick <i>v.</i> Horan	15

	Page.
McCoy, Howell v.....	76
McCue, Middlesex Co. v.....	80
McDonald, Livingston v.....	82
McEvoy v. Taylor.....	13, 17
McGavin, McIntyre v.....	70
McGill v. State.....	103
McGowan, Mizell v.....	15
Machias Water Power Co., Morse v.....	66
McIntyre v. McGavin.....	70
Mackintosh, Brookline v.....	18, 95
Mackintosh, Harris v.....	67
McLaughlin, Lyon v.....	58
McMurray, Baxendale v.....	59, 70
MacNamara v. Taft.....	19, 51, 59, 61
Manigault v. Springs.....	118, 119
Mann v. Retsof Mining Co.....	34
Mansfield v. Ballett.....	124, 126
Mansfield v. Bristol.....	56
Markwardt v. Guthrie.....	75, 121, 126
Martin v. Schwertley.....	83
Martin, Thurber v.....	44
Martinowsky v. Hannibal.....	55
Mason v. Apalache.....	36, 110
Massachusetts, Jacobson v.....	93, 94, 115
Mendota Coal & Coke Co., Packwood v.....	17
Merrifield v. Lombard.....	18, 21, 58, 66, 67, 70
Merrifield v. Worcester.....	127
Merrill, Harley v.....	54
Mersereau, Slater v.....	56
Meyer v. Dresser.....	45
Middlesex Co. v. McCue.....	80
Middlestadt v. Waupaca Starch & Potato Co.....	24, 58
Middleton v. Flat River Booming Co.....	60
Miles City v. Board of Health.....	95, 100, 108
Miller v. Hughland Ditch Co.....	55
Miller v. Pendleton.....	45
Mills v. Brooklyn.....	81
Mills v. Hall.....	71
Mills v. United States.....	118
Milwaukee, Harper v.....	73
Mining Co., Threant v.....	36, 110, 125
Mininger v. Norwood.....	68
Minnesota v. Barber.....	93
Mississippi Mills Co. v. Smith.....	36, 42
Missouri v. Illinois.....	67
Mizell v. McGowan.....	15
Moffitt, Valparaiso v.....	55
Moody v. Saratoga Springs.....	131
Moore v. Webb.....	70
Moore, Wright v.....	68
Moorehead, Comm. v.....	101
Morrison, De Donato v.....	54
Morse v. Machias Water Power Co.....	66

	Page.
Morse, State v.....	95
Morse v. Worcester.....	130
Moser v. Burlington.....	121
Mugler v. Kansas.....	93
Murray v. Hay.....	60
Nashua, Von Mills v.....	75
Nelson v. State Board of Health.....	95, 115, 116
New Bedford, Hoskell v.....	75
New Britain, Nolan v.....	70, 120, 121
Newburgh, Gardner v.....	57, 66
Newington, Hillman v.....	50
N. J. Steamboat Co., Cleveland v.....	45
New Rochelle, Bolton v.....	132
Newton, Baird v.....	70
New York v. Blum.....	11, 14, 96, 112
New York v. Pine.....	30, 41
N. Y. Cent. & E. R. Co., Garwood v.....	62
N. Y. Central & H. R. R. Co. v. Rochester.....	132
N. Y. Central Ry. Co., Waffle v.....	14
N. Y. Rubber Co. v. Rothery.....	61
N. H. & N. Co., Bailey v.....	45
N. N. & M. V. Co. v. Wilson.....	17
Noble v. Kenoway.....	45
Nolan v. New Britain.....	70, 120, 121
Noonan v. Albany.....	84, 132
North Attleborough, Diamond v.....	119, 124
North Bloomfield Gravel Mining Co. v. Woodruff.....	50
Norwood, Mininger v.....	68
Nunemacher, Greene v.....	57
Obe v. Pattat.....	83
O'Brien, in re.....	101
O'Brien v. St. Paul.....	71
Olmstead v. Loomis.....	66
Oswald v. Wolf.....	65
Otley, Kewanee v.....	9
Owen, Embrey v.....	62
Packwood v. Mendota Coal & Coke Co.....	17
Palmer, Chipman v.....	48, 53, 55, 59
Paltrovich, Butte v.....	101
Parker v. American Woolen Mills Co.....	18, 31, 48, 51, 58, 62, 63
Parker v. Griswold.....	62
Parker v. Ry.....	16
Parker v. Winnepesaukee Lake Co.....	66
Parkhurst, Warren v.....	60
Parsons, Snow v.....	18, 27, 43, 44, 46, 61, 70
Paterson, Grey v.....	77, 119
Pattat, Obe v.....	83
Patterson v. Colebrook.....	46
Peck v. Herrington.....	80
Pendleton, Miller v.....	45
Penn American Plate Glass Co. v. Schwinn.....	25, 27, 52, 128
Pennington v. Brinsop Hall Coal Co.....	48
Pennoyer v. Allen.....	43

	Page.
Penna. Coal Co. v. Sanderson.....	31, 35, 42, 70
Penna. R. R. Co., Clark v.....	62
People v. Cunningham.....	71
People v. Elk River Mill & Lumber Co.....	78
People v. Gold Run, etc., Mining Co.....	71
People v. Hulbert.....	12, 14, 85, 95, 101
People v. Kirk.....	111
People v. La Pell.....	113
Petaluma, Geurkink v.....	53
Peterson v. Santa Rosa.....	76
Pine, New York v.....	30, 41
Pittenger, Robeson v.....	66
Plamer, Chipman v.....	48
Platt v. Waterbury.....	72, 120, 121, 129
Pope, Varney v.....	60
Pope, Western Paper Co. v.....	24, 42, 49, 52, 59, 128
Porter v. Whitman.....	60
Port Jervis, Bohon v.....	121
Portland v. Cook.....	101
Portland Mfg. Co., Webb v.....	62
Potter, Stockport Water Works Co. v.....	52
Postel, Bonte v.....	54
Powell, Cutter v.....	45
Prentice v. Geiger.....	43, 69
Pumpelly v. Green Bay & Miss. Canal Co.....	117
Ry., Jenkins v.....	16
Ry., Parker v.....	16
Ray v. Sellers.....	70
Rector, Health Department v.....	191
Red Bank Oil Co., Witland v.....	53
Red River Roller Mills Co. v. Wright.....	20, 43, 59, 61
Reid v. Gifford.....	60
Renner v. Bank of Columbia.....	45
Resbridger, Fieh v.....	57
Retsof Mining Co., Mann v.....	34
Revere, Brodbine v.....	115
Rhodes v. Cleveland.....	126
Richards, Little Schuylkill Nav. R. & C. Co. v.....	54, 55
Richardson, Littleton v.....	45
Richmond, Attorney General v.....	71
Richmond v. Test.....	49, 69, 127, 128, 130
Richmond Mfg. Co. v. Atlantic De Laine Co.....	23, 25, 58
Rideout v. Knox.....	100
Ripka v. Sergeant.....	62
Roach, L. S. & M. S. R. R. Co. v.....	110
Robb v. Carnegie.....	34, 42
Robb v. La Grange.....	80
Robeson v. Pittenger.....	66
Robinson, Henderson v.....	71
Rochester, Chapman v.....	52, 73, 75, 79, 132
Rochester, Hooker v.....	132
Rochester, N. Y. Central & H. R. R. Co. v.....	132
Rochester, Smith v.....	86

	Page.
Rocky Mount, Hines v.....	121
Roselle, Crane v.....	80
Rothery, New York Rubber Co. v.....	61
Ruffner, Bowling Coal Co. v.....	11, 32, 52
R. W. & O. T. R. R. Co., Booth v.....	132
Rylands, Fletcher v.....	32
St. Paul, O'Brien v.....	71
Salem Iron Co. v. Hyland.....	20, 41, 123
Salt Lake City v. Young.....	44, 95
Sanderson, Penna. Coal Co. v.....	31, 35, 42, 70
Sandusky Portland Cement Co. v. Dixon Pure Ice Co.....	58
Sanitary District, Beidler v.....	9
Santa Rosa, Peterson v.....	70
Saratoga Springs, Moody v.....	131
Saratoga Springs, Stoddard v.....	132
Schaefer, Woodyear v.....	40, 48, 50
Schiff, Sowers v.....	15
Schreiner, Boyd v.....	61
Schureman, Crocker v.....	45
Schwertley, Martin v.....	83
Schwinn, Penn American Plate Glass Co. v.....	25, 27, 52, 128
Scotfield v. Lansing.....	60
Seaman, Campbell v.....	67
Sedalla, Smith v.....	123
Selfert v. Brooklyn.....	132
Seladon Rural District Council, Staffordshire County Council v.....	113
Sellers, Ray v.....	70
Sellick v. Hall.....	55
Senior v. Anderson.....	53
Sergeant, Ripka v.....	62
Serley v. Alden.....	53
Sewall's Falls Bridge Co. v. Flisk.....	45
Sewer District No. 3, Jones v.....	127
Shaw, Bealey v.....	70
Shepherd, Booth v.....	103
Sherley, Barnard v.....	41, 127, 129, 130
Sherman v. Fall River Iron Works Co.....	48
Shields v. Arndt.....	57
Siegel, Hall v.....	110
Silver Spring Bleaching & Dyeing Co. v. Wansuck Co.....	23, 48, 58
Simmons v. Everson.....	55
Sisson, Comm. v.....	95, 99, 100, 115
Slack, West Muncie Strawboard Co. v.....	40, 55, 56
Slater v. Mercereau.....	56
Sloggy v. Dilworth.....	55
Smith, Hill v.....	48
Smith, Kraver v.....	60, 71
Smith, Miss. Mills Co. v.....	36, 42
Smith v. Rochester.....	86
Smith v. Sedalla.....	123
Snow v. Parsons.....	18, 27, 43, 44, 46, 61, 70
Soltan v. De Held.....	66
Somers, Blackburne v.....	71

	Page.
Southern Coal & Transportation Co., State v.	34, 107
Sowers v. Schiff.....	15
Sparkman v. Swift.....	54
Spellmire, State v.....	103
Sprague v. Dorr.....	90, 99, 100
Sprigg v. Garrett Park.....	94
Springs, Manigault v.....	118, 119
Staffordshire Potteries Co., Clowes v.....	96
Staffordshire County Council v. Seisdon Rural District Council.....	113
Standard Bag, etc., Co., Cleveland v.....	50
Standard Mining Co., Hill v.....	25
State v. Bargas.....	103
State v. Brondbelt.....	94
State, Dennis v.....	49
State, Gentsch v.....	103
State v. Griffin.....	89, 104
State v. Gurry.....	116
State v. Hyman.....	94
State, McGill v.....	103
State v. Morse.....	95
State v. Southern Coal & Transportation Co.....	34, 107
State v. Spellmire.....	103
State v. Wheeler.....	91, 105, 107
State Board of Health v. Diamond Mills Paper Co.....	95, 104, 107
State Board of Health v. Greenville.....	93, 101, 116
State Board of Health, Nelson v.....	95, 115, 116
Stein v. Barden.....	68
Stein, Lewis v.....	72, 91, 95
Steinkamp, Cincinnati v.....	103
Stephens, Blaisdell v.....	55, 59
Sterling Iron & Zinc Co., Beach v.....	11, 32, 34, 47, 58, 67, 120
Stevens, Johns v.....	62
Stevenson v. Coal Co.....	25
Stewart, Clark v.....	66
Stockport Water Works Co. v. Potter.....	52
Stoddard v. Saratoga Springs.....	132
Stover v. Whitman.....	45
Straight v. Hover.....	39, 52
Straight Creek Coal & Coke Co., Comm. v.....	109
Strobel v. Kerr Salt Co.....	11, 34, 44, 48, 49, 58, 60
Sullivan, C., H. & D. R. Co. v.....	94
Sutcliffe, Wood v.....	10
Swift, Sparkman v.....	54
Swindell, Long v.....	55
Taft, MacNamara v.....	19, 51, 59, 61
Talbott v. Butte City Water Co.....	101
Taylor, Columbus Co. v.....	32
Taylor, McEvoy v.....	13, 17
Tearney, Laffin & Rand Powder Co. v.....	43
Tenn. Coal, Iron & R. Co. v. Hamilton.....	18, 35, 40, 52
Test, Richmond v.....	49, 69, 127, 128, 130
Tetherington v. Donk Bros. Coal & Coke Co.....	9, 52
Tewksbury, Comm. v.....	92, 106

	Page.
Tazarkana, Carmichael v.....	126
Thomas v. Brockney.....	52, 62
Thomas v. Grinnell.....	83
Thorpe v. Brumfitt.....	59
Threatt v. Mining Co.....	36, 119
Thurber v. Martin.....	44
Tiffin v. McCormack.....	43
Tillotson, Wadsworth v.....	120
Train v. Boston Disinfecting Co.....	115
Trimble, Belknap v.....	66
Troy, C. H. & D. Ry. Co. v.....	94
Troy Iron & Nail Factory, Corning v.....	62
Tucker, Columbus & Hocking Coal & Iron Co. v.....	34, 45, 51
Tunbridge Wells Improvement Commissioners, Goldsmid v.....	68, 70, 74, 124
Turner, Ala. Consolidated Coal & Iron Co. v.....	68
Ulbricht v. Eufaula Water Co.....	63, 68, 66
Union Cattle Co., Barton v.....	14, 28, 31, 42, 59
United States v. Lynch.....	117, 119
United States, Mills v.....	118
Upton, Comm. v.....	71, 111
Valparaiso v. Hagen.....	123, 127, 128, 129, 130
Valparaiso v. Moffitt.....	55
Van De Vere v. Kansas City.....	122
Varney v. Pope.....	66
Veazie v. Dwinel.....	71
Von Mills v. Nashua.....	75
Wadsworth v. Tillotson.....	126
Waffle v. N. Y. Central Ry. Co.....	14
Waldron, Hayes v.....	21, 46, 61
Walker v. Aurora.....	111
Walker, Gladfelter v.....	47, 62
Waltham, Collins v.....	80
Wassuck Co., Silver Spring Bleaching & Dyeing Co. v.....	23, 48, 58
Warren v. Parkhurst.....	60
Warren Mfg. Co., Baltimore v.....	10, 48
Waterbury, Platt v.....	72, 120, 121, 129
Watertown, Daley v.....	81
Waud, Wood v.....	62
Waukesha, Winchell v.....	52, 73, 79, 121, 125, 126, 129
Waupaca Starch & Potato Co., Middlestadt v.....	24, 58
Webb, Moore v.....	70
Webb v. Portland Mfg. Co.....	62
Webber v. Gage.....	66
Welch v. Coglan.....	94, 116
Wendt, Bowen v.....	71
West v. L. & N. R. R.....	70
Western, Bush v.....	57
West Muncie Strawboard Co. v. Slack.....	49, 55, 56
Weston Paper Co. v. Pope.....	24, 42, 46, 52, 59, 128
Wheeler, State v.....	91, 105, 107
Wheeler v. Worcester.....	80, 81
White Spring Paper Co., Worthen v.....	11, 21, 59

	Page.
Whitman, Porter v.....	60
Whitman, Stover v.....	45
Wiest v. Electric Traction Co.....	54
Williams v. Halle Gold Mining Co.....	80, 119
Wilmington & Weldon Ry. Co., Wolcott v.....	10
Wilson, N. N. & M. V. Co. v.....	17
Winchell v. Waukesha.....	52, 73, 79, 121, 125, 126, 128
Winfield v. Worcester.....	80
Winnipeg Lake Co., Parker v.....	66
Winnipeg Mfg. Co., Coe v.....	66
Witland v. Red Bank Oil Co.....	53
Wolcott v. Wilmington & Weldon Ry. Co.....	10
Wolf, Oswald v.....	65
Wood, Irvine v.....	55
Wood v. Sutcliffe.....	10
Wood v. Waud.....	62
Woodbury v. Bromly.....	80
Woodruff v. North Bloomfield Gravel Mining Co.....	50
Woodward v. Worcester.....	67
Woodyear v. Schaefer.....	46, 48, 50
Worcester, Flagg v.....	80
Worcester, Merrifield v.....	127
Worcester, Morse v.....	130
Worcester, Wheeler v.....	80, 81
Worcester, Winfield v.....	80
Worcester, Woodward v.....	67
Worthen v. White Spring Paper Co.....	11, 21, 59
Wright v. Moore.....	68
Wright, Red River Roller Mills Co. v.....	20, 43, 50, 61
Yohn, Bard v.....	54
Young v. Bankier Distillery Co.....	33, 34
Young, Salt Lake City v.....	44, 95
Zehner, Hammon v.....	62

APPENDIXES.

APPENDIX I.

TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN RELATING TO BOUNDARY WATERS BETWEEN THE UNITED STATES AND CANADA.

(January 11, 1909.)

PRELIMINARY ARTICLE.

For the purposes of this treaty boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

ARTICLE IV.

* * * It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

ARTICLE VII.

The high contracting parties agree to establish and maintain an International Joint Commission of the United States and Canada, composed of six commissioners, three on the part of the United States appointed by the President thereof and three on the part of the United Kingdom appointed by His Majesty on the recommendation of the governor in council of the Dominion of Canada.

ARTICLE X.

Any questions or matters of difference arising between the high contracting parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada, either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the governor general in council. * * *

APPENDIX II.

STATE LEGISLATION RELATING TO THE POLLUTION OF STREAMS.

In connection with the foregoing digest of judicial decisions, the following compilation was made of the legislation in force in the different States for preventing the pollution of streams, including the more recent regulations of State health authorities. In addition to its relation with the preceding pages, this appendix was prepared to show the present status of such legislation. For this reason it has been made as comprehensive as possible and includes a large number of laws whose effect on the pollution of human water supplies seems almost accidental, a good example of which is the mass of legislation prohibiting putting into water any substance harmful to fish. In spite of the effort to make the compilation complete, however, all laws which might be interpreted as being related to the subject could not be given. For instance, although stream pollution is definitely regarded as a nuisance in some States and might be so considered by the courts in other States, yet the nuisance laws of the country are too voluminous to be given in full in this appendix. Therefore, the definition of nuisances, except those which specifically mention pollution of streams, and the detailed process of abatement of nuisances, have been omitted. Laws authorizing the closing of cemeteries which are a menace to health were omitted, although the menace might result from the proximity of a stream. Laws authorizing municipalities to compel connections with sewers were omitted, although preventing pollution of streams is an important reason for sewerage.

In excluding certain kinds of legislation, it was therefore necessary to draw an arbitrary line, which may be roughly explained by a few illustrations. Provisions as to the use of explosives in taking fish were omitted, provisions as to the use of poisons for the same purpose were included; general authority for a State laboratory to make examinations of water was omitted, special authority for the same purpose in case the water was suspected of being contaminated was included; sections providing penalties for injury to waterworks were omitted, sections providing penalties for injury to the water itself were included; laws against offensive trades in cities were omitted except where it appeared that the legislators had considered the nuisance occasioned by the disposal of the wastes of such trades in the streams of the cities. To avoid some of the difficulties of so rigid

a classification, there have been included in the compilation a number of interesting laws which were strictly without the boundary set.

In preference to following strictly the punctuation and capitalization of the laws it has been found advisable to adopt a uniform system.¹ Furthermore, unimportant typographical errors in the text of the laws have been corrected. Where mistakes of more moment occurred the original form has been kept, followed by the word "sic" in brackets, or the correct form has been supplied and the original form recorded in a footnote. The greatest care has been taken to make the text, apart from these minor changes, an accurate copy of the codes or session laws. Phrases in brackets were supplied by the compiler of this appendix; those in parentheses are a part of the law or were supplied by the compiler of the code from which the law was taken. As a rule italic side headings are not a part of the laws. They were supplied by the compiler for ease of reference and to secure uniformity, and as a rule relate specifically to the pollution of streams rather than to the main idea of a given section.

The compilation includes all laws relating to the subject available² on October 10, 1917. This means that in general the session laws of 1917 have been consulted, but in the following States such laws were not available: Alabama, Arkansas, District of Columbia, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Mississippi, Nebraska, Oklahoma, Philippines, Rhode Island, Vermont, Virginia, and Wisconsin. Several of these States had no legislative sessions in 1916, so that the latest laws quoted from them would have been passed in 1915. In the case of some States whose 1917 laws could be consulted only a part were available; for instance, the New York laws were consulted through chapter 809 and the Pennsylvania laws through chapter 426.

ALABAMA.

[CODE OF 1907.]

702 (as amended by act No. 619, 1915). *State board of health to examine sources of water supply and prevent pollution of water*.—The State board of health shall, through its executive officer, have authority and jurisdiction:

(5) To examine the sources of supply, reservoirs, and avenues of conveyance of drinking water furnished to incorporated cities and towns, and whenever these waters are found polluted, or conditions are discovered likely to bring about their pollution, proper steps shall be taken to improve or correct conditions.

703 (as amended by act No. 619, 1915). *County boards of health to supervise water supplies and prevent pollution of same*.—It shall be the duty of county boards of health:

¹ That of the Government Printing Office.

² At the Congressional Library, Washington, D. C.

(4) To exercise through their committees of public health and health officers special supervision * * * over the sources of supply, reservoirs, and avenues of conveyance of drinking water furnished to incorporated towns in their respective counties; and whenever unsanitary conditions are found in any of these places or institutions it shall be the duty of the executive officer or other official of the State board of health to order the county or municipal health officer under whose jurisdiction the unsanitary condition is found to use all authority in his power to have the same abated.

3488 (as amended by act No. 59 of 1909). *Waterworks companies may acquire riparian rights, etc., to prevent pollution of water.*—Corporations authorized to construct and operate waterworks for the supplying of cities, villages, towns, and their inhabitants, or others living or doing business in the vicinity of them, with water * * * may * * * acquire by condemnation riparian rights and all such lands adjacent to such streams or water sources [as are used for water supply] as shall be necessary to protect and preserve the purity of such supply * * *. The power of condemnation herein given shall include the right to condemn, wherever necessary, for any of the purposes hereinbefore mentioned, any yard or curtilage of a dwelling house, garden, stable, lot, or barn, or so much thereof as may be necessary; and whenever the ownership of the mineral interest in lands has been severed from the ownership of the surface, and the mining of the minerals would endanger any proposed canal, storage pond, or reservoir, said water companies may institute ad quod damnum proceedings against the owner or owners of the minerals situate under the proposed canal, reservoir, or storage ponds in the probate court of the county in which the lands are situated in accordance with the general laws of the State, condemning said mineral interests or so much thereof as may be required for the support of the surface where said canal, reservoir, or storage pond is to be located. * * *

6899. *Poisoning streams to catch fish.*—Any person who takes, catches, kills, or attempts to take, catch, or kill fish in any waters of the State, by poisoning the stream or body of water in which they are found, or by the use of any poisonous substance put in the water, or by the use of fishberries, lime * * * must, on conviction, be fined not less than ten nor more than one hundred dollars, to be paid into the State treasury to the credit of the game and fish protection fund.

7426. *What nuisances are indictable.*—Any person who shall erect, or continue, after notice to abate, a nuisance which tends or threatens to injure the health of the citizens in general, or to corrupt the public morals, shall be guilty of a misdemeanor. (Sec. 718, as amended by act No. 739, 1915, gives the process of abatement. It has been omitted from this compilation.)

7575. *Poisoning springs, wells, etc.*—Any person who willfully or wantonly poisons any spring, fountain, well, or reservoir of water must, on conviction, be imprisoned in the penitentiary for not less than 10 nor more than 20 years.

7622. *Misdemeanor for which no special punishment has been provided.*—Any person who commits a public offense which is a misdemeanor at common law or by statute, and the punishment of which is not particularly specified in this code, must on conviction be fined not more than \$500, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months.

7874. *Depositing dead animals and fowls in running streams.*—Any person who deposits the body of a dead animal or fowl in any running stream must, on conviction, be fined \$10, and one-half of the fine must go to the informer. Justices and constables are especially charged with the enforcement of this section.

7875. *Polluting water supply of town or city.*—It shall be unlawful for any person to knowingly deposit any dead animal or noxious substance in any source, standpipe, or reservoir from which water is supplied to any city or town of this State. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding \$500, and may be sentenced to hard labor for the county not exceeding one year.

[ACT No. 675 OF 1915.]

SECTION 1. *To give State board of health supervision and control over sources of water supply.*—The State board of health shall exercise supervision over, and shall from time to time, by its employees or agents, examine the source of supply of the various waterworks systems in this State, and also the method of filtering and treating such water and delivering the same to consumers. The State board of health shall from time to time make such recommendations to any person, company, corporation, or municipality supplying water for domestic purposes to consumers as will tend to improve the water supply or to preserve its purity.

SEC. 2. *Board of health to examine water supplies.*—It shall be the duty of the State board of health to procure, as often as once every three months, and oftener if in the opinion of the president of the State board of health it should be necessary, a sample of water furnished to consumers by each person, company, corporation, institution, or municipality in this State which supplies water for domestic purposes to the public from or by means of any waterworks or waterworks system. It shall be the duty of the State board of health to cause a bacteriological examination to be made of the samples of water so procured, and to record such analyses in a book kept for that purpose in the office of the State board of health, and to furnish to the municipal authorities in which the waterworks system is located a copy of such analyses, and, if such waterworks system is owned by an individual or private corporation, to furnish a copy of such analyses to such individual or private corporation also.

SEC. 3. *Board of health to direct steps to purify polluted water.*—The State board of health is charged with the duty of inspecting from time to time the quality of water furnished to consumers by any person, firm, corporation, association, or municipality; and when it has been ascertained by the State board of health that any water furnished to consumers is impure, or is unfit for human consumption, or is likely to cause disease in man, the State board of health shall notify the person, company, corporation, institution, or municipality furnishing to consumers the water which is found to be impure, and shall direct (that) such steps shall be taken to purify such water supply, and to prescribe the time within which such steps shall be taken to make such water supply conform to the requirements of the State board of health; and if any such person, firm, corporation, institution, or municipality shall fail within the time required by such order to take the steps required by the State board of health, and remove the cause of complaint, the State board of health shall publish in a newspaper published in the county a statement to consumers of water so found to be impure, calling their attention to the impurity of the water supply and directing them as to the course to be taken for the preservation of the health of such consumers.

SEC. 4. *Board of health to approve waterworks.*—After the passage of this act no waterworks plant or system shall be constructed until application has been made to the State board of health for a permit stating the place where such waterworks system is to be constructed and describing the source of the water supply, and no new source of water supply shall be established or

developed until a like application for a permit is filed with the State board of health describing such new or additional water supply which it is proposed to develop. When such application is made it shall be the duty of the State board of health within 30 days thereafter to examine the source of supply and the drainage of the land adjacent thereto and to analyze the water and determine whether it is or not or can be made pure and wholesome and suitable as a domestic water supply. The State board of health shall pay particular attention to the watershed which it is proposed to utilize and the liability of the same to pollution, and it shall not approve the application of any person, firm, corporation, or municipality to develop or utilize a source of supply where the water is unfit for use or likely to become so. The State board of health, in making such examination, shall consider all the facts and circumstances bearing upon the source of supply and the possibility of its contamination, and if it ascertains that the water is unfit for domestic purposes, is contaminated or likely to become so, or that the drainage of the watershed is likely to cause pollution of said water supply in such a way that the same can not be remedied, the State board of health shall refuse to grant to any person, company, corporation, institution, or municipality a permit to utilize said water supply, provided, however, that the State board of health may issue said permits if the water so proposed to be used can be purified, and the person, firm, corporation, or municipality desiring to develop or utilize the same will comply with the requirements of the State board of health and treat and purify such water in the manner prescribed by it.

SEC. 5. *Permit from board of health required.*—No person, firm, corporation, institution, or municipality shall hereafter construct any waterworks or waterworks system for supplying water for domestic purposes to the public without having first obtained a permit from the State board of health as provided in the preceding section, and no municipal corporation shall be authorized to incur any debt or to issue any bonds in aid of such water supply unless a permit shall first have been obtained from the State board of health approving the source of supply as set out in the preceding section.

SEC. 7. *Not to take away power of municipalities to regulate source of water supply.*—No provision of or contained in any section of this act shall be construed to be in conflict with or to supplant any power now or hereafter to be vested in municipal corporations to regulate, supervise, or control the source or sources of supply of waterworks plants or systems supplying water to cities and towns and the inhabitants thereof, to provide for examinations or analysis of water, to prescribe the conditions upon which waterworks plants may be built or the sources of supply changed or enlarged, or to prevent the furnishing of impure or polluted water or provide for the purity of water supplies or the maintenance of the purity thereof.

[Act No. 691 of 1915.]

SECTION. 1. *Limitation on manufacturing plant becoming a nuisance.*—No manufacturing or other industrial plant or establishment, or any of its appurtenances, or the operation thereof, shall be or become a nuisance, private or public, by any changed conditions in and about the locality thereof after the same has been in operation for more than one year, when such plant or establishment or its appurtenances, or the operation thereof, was not a nuisance at the time the operation thereof began¹; *Provided*, That the provisions hereof shall not apply whenever a nuisance results from the negligent or improper operation of any such plant, establishment or any of its appurtenances: *And*

¹ Law reads "begun."

provided further, That the provisions of this act shall not affect or defeat the right of any person, firm or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in the condition of, the waters of any stream, or on account of any overflow of the lands of any person, firm or corporation.

SEC. 2. *Certain ordinances null and void.*—Any and all ordinances now adopted, or hereafter adopted,¹ by any municipal corporation in which such plant is located, operating to make the operation of any such plant or establishment, or its appurtenances, a nuisance, or providing for an abatement thereof as a nuisance, in the circumstances set forth in the preceding section are and shall be null and void: *Provided*, That the provisions hereof shall not apply whenever a nuisance results from the negligent or improper operation of any such plant, establishment, or any of its appurtenances: *Provided further*, That section two of this act shall not be construed to invalidate any contracts heretofore made, but in so far as contracts are concerned this act only applies to contracts and agreements to be made in the future.

[SANITATION OF CAMPS AND RESORTS, REG. BD. OF H., MAY 16, 1913.]

202. The owner, agent, manager, or foreman of any lumbering camp, mining camp, sawmill camp, railroad camp, boarding car or construction camp, pleasure camp or resort, or so-called open-air health resort, or industry requiring the establishment of a camp, shall be responsible for the proper execution and enforcement of any regulations herein contained, or of any clause of any health regulation governing any case or circumstance for the proper sanitation and cleanliness thereof.

204. Garbage and all refuse shall be disposed of so as not to create a nuisance or to contaminate drinking water, and in all and other respects conform to the regulations as provided elsewhere.

ALASKA.

[COMPILED LAWS, 1913.]

1903. *Poisoning wells, etc.*—Whoever * * * willfully poisons any well, spring, cistern, or reservoir of water shall be imprisoned in the penitentiary not more than 15 years nor less than 2 years.

2039. *Polluting water used for domestic purposes.*—Any person who shall put any sewage, drainage, or refuse, or polluting matter, as either by itself or in connection with other matter will corrupt or impair the quality of any well, spring, brook, creek, branch, or pond of water which is used or may be used for domestic purposes, shall be deemed guilty of a misdemeanor.

[2040 (as amended by Session Laws of 1913, chap. 81).] *Putting dead animal into water supply.*—Any person, firm, or corporation who puts any dead animal carcass, or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious, or offensive substance into, or in any other manner not herein named befoils, pollutes, or impairs the quality of any spring, brook, creek, branch, well, or pond of water which is or may be used for domestic purposes, * * * shall be considered as creating or maintaining a nuisance, and any person, firm, or corporation who shall neglect or refuse to abate such nuisance upon order of any health officer shall be guilty of a

¹ Law reads "adopted are or hereafter adopted."

² Chapter 81, Session Laws of 1913, amended Sec. 160, Chapter 10, act of March 8, 1889, this section appearing as 2040 in the Compiled Laws, 1913.

misdemeanor and punished as provided in section 161 [sec. 2041] of this chapter, and in addition to such punishment the court or justice shall assess judgment against the defendant for the expenses of abating such nuisance, which judgment shall be enforced in the same manner as an execution in a civil action.

2041. *Penalty.*—Any person violating the provisions of either of the two sections last preceding shall, upon conviction, be fined not less than ten nor more than fifty dollars, or be imprisoned not less than five nor more than twenty-five days, or by both fine and imprisonment.

2072. *Punishment for misdemeanor.*—Whenever, by any law relating to said district,¹ an act is declared to be a misdemeanor, and no punishment is prescribed therefor, the person committing the same, upon conviction thereof, shall be punished by imprisonment in the county jail not more than one year, or by fine not more than five hundred dollars.

[SESSION LAWS OF 1913, CHAP. 50.]

SECTION 1. *Unlawful to cast lumber waste into salmon streams, etc.* It shall be unlawful for the proprietor of any sawmill in this Territory or any employee therein, or any other person, to cast sawdust, planer shavings, or other lumber waste made by any lumbering or manufacturing concern, or to suffer or to permit such sawdust, shavings, or other lumber waste to be thrown or discharged in any manner into any of the streams entering into salt waters of this Territory or bays immediately adjacent to salmon streams, or to deposit the same where high water will take the same into any of the waters of this Territory.

SEC. 2. Any person violating this act shall be guilty of a misdemeanor.

ARIZONA.

[REVISED STATUTES, 1913, CIVIL CODE.]

4370. *Rules and regulations of State board of health.*—The board [State board of health] shall have power, and it shall be its duty:

(3) To make and enforce all needful rules and regulations for the prevention and cure and to prevent the spread of any contagious, infectious, or malarial diseases among persons and domestic animals.

4403. *Penalty for violation of rules and regulations.*—* * * Any person who fails to comply with or violates any of the provisions of this chapter [Chap. I, board of health, of title 41, public health] * * * shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten nor more than fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or by both; and any physician convicted under this chapter shall have his license revoked.

[REVISED STATUTES, 1913, PENAL CODE.]

19. *Penalty for misdemeanor.*—Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months or by a fine not exceeding three hundred dollars, or by both.

348. *Poisoning of water supplies.*—Every person * * * who willfully poisons any spring, well, or reservoir of water is punishable by imprisonment in the State prison for a term not less than one nor more than ten years.

¹ Refers to Territory of Alaska.

383. *Definition of public nuisance.*—Anything which is injurious to health or is indecent or offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin, * * * is a public nuisance.

384. *Where damage is unequal.*—An act which affects an entire community or neighborhood, or any considerable number of persons, as specified in the last section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

385. *Committing of public nuisance a misdemeanor.*—Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

386. *Putting bodies of dead animals, etc., into streams.*—Every person who puts the carcass of any dead animal or the offal from any slaughter pen, corral, or butcher shop into any river, creek, pond, reservoir, stream; * * * and any person who puts any water-closet or privy or the carcass of any dead animal or any offal of any kind in or upon the borders of any stream, pond, lake, or reservoir from which water is drawn for the supply of the inhabitants of any city or town in this State, so that the drainage from such water-closet, privy, carcass, or offal may be taken up by or in such stream, pond, lake, or reservoir; or who allows any water-closet or privy or carcass of any dead animal or any offal of any kind to remain in or upon the borders of any such stream, pond, lake, or reservoir within the boundaries of any land owned or occupied by him, so that the drainage from such water-closet, privy, carcass, or offal may be taken up by or in such stream, pond, lake, or reservoir; or who keeps any horses, mules, cattle, swine, sheep, or live stock of any kind penned, corralled, or housed on, over, or on the borders of any such stream, pond, lake, or reservoir, so that the waters thereof become polluted by reason thereof, or who bathes in any such stream, pond, lake, or reservoir; or who by any other means fouls or pollutes the water of any such stream, pond, lake, or reservoir, is guilty of a misdemeanor.

536. *Depositing filth in reservoirs, etc.*—Every person * * * who shall empty or place, or cause to be emptied or placed, into any such canal, ditch, or flume or reservoir [used for the purpose of holding or conveying water for manufacturing, agricultural, mining, irrigation, or generation of power or domestic uses] any rubbish, filth or obstruction to the free flow of the water is guilty of a misdemeanor.

690. *Use of poison for taking fish.*—Every * * * poisonous or stupefying substance or device used or intended for use in taking or killing * * * fish in violation of this title [Title 18, Preservation of game and fish] and * * * kept, or found in or upon any of the streams or waters of this State or upon the shores thereof * * * is hereby declared a nuisance and may be abated and summarily destroyed by any person, and it shall be the duty of every officer authorized to enforce this title to seize and summarily destroy the same and no prosecution or suit shall be maintained for such destruction * * *.

683. *Fish must be taken by means of hook and line only.*—It shall be unlawful for any person or persons to catch, kill, or have in his or their possession any species of trout or game-food fish found in any of the public streams or waters of this State unless said fish has been taken with a hook and line attached to a rod or held in the hand, and any person or persons catching, killing, or having in their possession, any such fish, taken in any other manner shall be deemed

guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$25 nor more than \$50 or by imprisonment for not less than 10 days nor more than 30 days, or by both such fine and imprisonment, in the discretion of the court, and every fish caught or killed in violation hereof, shall constitute a separate and distinct offense.

ARKANSAS.

[DIGEST OF THE STATUTES, 1916.]

617. *Regulations of State Board of Health.*—Power is hereby conferred on the Arkansas State Board of Health to make all necessary and reasonable rules and regulations of a general nature for the protection of the public health, and for the general amelioration of the sanitary and hygienic conditions within the State, for the suppression and prevention of infectious, contagious and communicable diseases * * *.

644. *Punishment for violation of regulations of board.*—Every firm, person, or corporation, violating any of the provisions of this act [section 617, but not section 620 is a part of the act] of [or] any of the orders, rules, or regulations made and promulgated in pursuance hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment not exceeding one month or both.

2051. *Poisoning streams for any purpose.*—Any person who shall poison any lake or stream of water for the purpose of killing stock, or for any other purpose, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than \$100 nor more than \$500.

3330. *Misdemeanor to pollute water.*—If any person * * * shall pollute the water [in or near the impounding dams or reservoirs of any water plant] or affect its wholesome qualities, he shall be deemed guilty of a misdemeanor and be fined for each and every offense in any sum not exceeding \$200.

4045. *Poisoning streams for purpose of killing fish.*—It shall be unlawful for any person, with the intent to kill, maim, or paralyze any fish or other water animal, to cast, drop, or otherwise deposit in any river, creek, lake, or pond, or in any other stream or body of water within this State any intoxicating or stupefying liquid, drug, vegetable, or fruit, or to take from any river, creek, lake, pond, or other stream or body of water within this State, any fish so stupefied, intoxicated, or killed.

4047. *Penalty.*—Any person found guilty of violating either of the provisions of sections 4045 * * *, upon indictment in the circuit court or before a justice of the peace of the proper county, shall be fined for each offense not less than \$5 nor more than \$25.

6468. *Municipal corporations have power to prevent pollution of water.*—They [municipal corporations] shall have power * * * to prevent pollution of water * * * and its [their] jurisdiction to prevent or punish any pollution or injury to the stream or source of water, or to the waterworks, shall extend 5 miles beyond the corporate limits.

[PRIVIES AND CESSPOOLS. REG. Bd. & H., MAY 16, 1913.]

214. In cities, towns, and villages, incorporated or unincorporated, all human excreta shall be deposited in sewers, cesspools, vaults, septic tanks, dry closets, or incinerators of special construction.

215. All cities and towns not now operating a sewerage system shall, before undertaking the installation of such system, present the proposed plan, together with the plan for the proposed final disposal of sewage, for the approval of the State board of health.

216. Cesspools and vaults shall be of water-tight construction for holding excreta and be made fly proof, and whenever the contents reach within 2 feet of the ground surface must be cleaned out to the bottom. They shall at least once a year, and at such other times as may be considered necessary by the health officer, be thoroughly emptied and cleaned.

217. Cesspools and vaults shall be constructed in accordance with plans and specifications approved by the State board of health.

218. No part of the contents of any privy shall be removed therefrom nor shall the same be transported through or over any streets or highways except as the same shall be removed and transported by means of some air-tight apparatus, pneumatic, or other process, so as to prevent the contents from being agitated or exposed to the open air during the process of such removal or transportation.

219. Where persons are employed or intended to be employed in any trade, occupation, or business there shall be provided sufficient and suitable privy accommodations, having regard to the number of persons employed or in attendance; and also where persons of both sexes are employed or intended to be employed or in attendance sufficient and separated privy accommodations shall be provided for each sex.

220. The term "privy" shall be held to mean any building or part of a building used or intended to be used for the reception of human excreta and which is not connected with the public sewer or some duly authorized system of sewage disposal so as to immediately remove such material from such building.

221. No person, firm, or corporation shall own, maintain, or rent any privy in any incorporated or unincorporated city, town, or village unless the same shall be so constructed as to prevent the soil from contamination; and to prevent the access of flies to the excrement deposited therein by means of wire gauze, 18 strands to the inch in each direction; and to permit the easy and proper placing and removal of a receptacle, the dimensions of which shall be at least 16 inches in height and 15 inches in diameter.

222. Regulation 216 applies to all schoolhouses, churches, camps, mills, depots, factories, public buildings, railroad stations, boarding and construction cars.

223. Dry closets shall be constructed in accordance with plans and specifications furnished by the State board of health.

224. All dry closets shall be kept free from odor, and for this purpose dry pulverized earth, ashes, or chloride of lime shall be used to cover at all times the excreta. Dry closets shall have containers emptied at least once in every two weeks, and as often as may be necessary.

225. Human excreta shall not be used for fertilization purposes except the same has been treated by a method by the State health officer.

226. Human excreta taken from cesspools, vaults, or dry closets shall be buried or incinerated. When such excreta is buried it shall be planted to a depth of not less than 3 feet and not less than 300 feet from any water supply, and shall not be buried within the corporate limits of any city or town, nor within 500 yards of any habitation.

227. No abandoned well or deep well shall be used for sewage or a receptacle for household waste.

228. No privy vault, cesspool, or reservoir into which a privy, water-closet, sink, or stable is drained, except it be water-tight, shall be established in water.

bearing strata or within 150 feet of any well, spring, or any other source of water used for drinking or culinary purposes.

229. All privy vaults, reservoirs, or cesspools named in regulation 217 shall be cleaned and emptied of their contents at least once every year before the 1st day of May and shall at all times be kept thoroughly deodorized and disinfected by adding to the contents thereof at least once each month, or oftener if necessary, calcium hypochlorite as follows: Take the calcium hypochlorite in powder form and sprinkle over the contents until the odor is abated, stirring contents if necessary. All privy vaults within the limits of any city or town shall not be less than 5 feet deep and shall be constructed of brick set in cement, or of concrete construction.

230. No privy vault, water-closet, cesspool, sink, or stable drain shall open into any ditch, stream, or drain, except into the public sewers of any city or into disposal tanks equipped with aerated contact or trickling filters of ample area.

231. All sewer drains leading to outfalls or disposal plants shall be of standard construction, and no sewer drain or outlet from any sewage-disposal plant, except as hereinafter provided, shall empty into any lake, pond, creek, stream, or open field.

232. Septic tanks or other disposal tanks shall be made of water-tight concrete or masonry construction. The filters of disposal plants, except in isolated locations in nonwater-bearing strata, shall be installed in basins with water-tight bottoms and side walls.

233. All disposal plants not discharging the effluent into an established sewer system shall be provided with aerated filter beds constructed of proper filtering materials and of sufficient capacity to render the effluent clear and nonputrescible at all seasons of the year; *Provided*, That in the case of country residence and other isolated locations the effluent from septic tanks or cesspools or other types of sewage disposal need not be subjected to filtration if such effluent can be discharged in sufficient isolation to prevent the creation of a nuisance or a menace to health, and in any case the pollution of any source of domestic water supply must be avoided.

234. The nonputrescibility of effluents shall be determined by recognized tests.

235. If the effluent from the filters shall be discharged into any watercourse, open drain, stream, or pond or source of water supply, or upon any lowland where in any manner by drinking the effluent or water polluted by it, or by contact with the same, either by man or beast, pathogenic germs may be transmitted, such effluent shall be sterilized by calcium hypochlorite or other suitable and safe chemical means.

236. The discharge of the effluent from septic disposal plants or any other type of disposal plant into abandoned wells or into creviced strata reaching water-bearing strata from which a domestic or public water supply is drawn is prohibited.

237. The different methods of irrigation and intermittent filtration are not intended to be excluded by the above requirements, but are also permitted and recommended where the conditions and surroundings will allow such methods of sewage disposal to be safely employed without creating a nuisance or menace to public health and without polluting any source of domestic or public water supply.

[PROTECTION OF WATER SUPPLIES. REG. BD. OF H., MAY 16, 1913.]

238. *Water pollution.*—Any person or persons, firm, company, corporation, or association in this State, or the managing agent of any person or persons, firm,

company, corporation, or association in the State, or any duly elected, appointed, or lawfully created State officer in this State, or any duly elected, appointed, or lawfully created officer of any county or municipality in this State, shall not deposit, permit, or allow any person or persons in their employ or under their control, management, or direction to deposit in any of the waters, lakes, rivers, streams, wells, and ditches in this State any rubbish, filth, or poisonous or deleterious substance or substances liable to affect the health of persons, fish, or live stock, or place or deposit any deleterious substance or substances in any place where the same may be washed or infiltrate into any of the waters herein named.

239. *Potable waters.*—It shall be the duty of local health officers to make an inspection of the sources of water supply of the several communities within their jurisdiction as may be necessary in order to ascertain whether the water from same is pure and wholesome; to take all usual and reasonable measures and precautions to secure and preserve its purity and wholesomeness.

240. Water from wells should be drawn only by the use of pumps and shall be protected from seepage by a water-tight covering.

241. No well may be excavated or dug on any premises used as a bakery or bake shop, and if such now exists the same shall be immediately filled up to the surface of the ground. The boring of an artesian well is not prohibited.

242. When the Arkansas State Board of Health shall, for the better protection of the water supply from pollution and to insure as far as possible the purity and wholesomeness of such water supply and to safeguard the public health in any city, town, or community in this State, make any order or regulation the execution of which will require or make necessary the securing of another water supply, or the modification or extension of any methods of water purification, or the construction and maintenance of a sewerage system for the disposal or purification of sewage, the corporation or municipality owning or operating waterworks or sewerage systems shall, at its own expense, comply with such orders and regulations in a reasonable length of time: *Provided*, That all proposed changes shall first be approved by the State health officer.

243. Every cistern used for drinking water shall be provided with a rain-water cut-off or any simple device which will deflect the first washings of the roof and prevent the introduction of impurities into the cistern.

[DISPOSAL OF GARBAGE AND REFUSE. REG. BD. OF H., MAY 16, 1913.]

268. All dead animals and all decomposed animal matter in any city shall be deodorized and immediately removed to dump grounds provided by the municipality, and there buried at least 3 feet underground or incinerated.

269. The dump grounds so used shall be so located and of such a character as not to contaminate any domestic or public water supply either by overflow or percolation.

[DISPOSAL OF BODIES OF DEAD ANIMALS. REG. BD. OF H., MAY 16, 1913.]

274. No carcass of any dead animal, except when the same is killed for food, shall be left unburied in the State of Arkansas, nor shall it be thrown into any stream, lake, pond, well, or other body of water therein.

CALIFORNIA.

[REVISED CIVIL CODE, 1915.]

3479. *Definition of nuisance.*—Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, or

unlawfully obstructs the free passage or use in the customary manner of any navigable lake, or river, bay, stream, canal, or basin * * * is a nuisance.

3480. *Public nuisance.*—A public nuisance is one which affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

3484. *Abatement does not preclude action.*—The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

3490. *Lapse of time does not legalize public nuisance.* No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right.

3491. *Remedies against public nuisance.*—The remedies against a public nuisance are: (1) indictment or information; (2) a civil action; or (3) abatement.

3493. *When individual can maintain action.*—A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

[REVISED PENAL CODE, 1915.]

19. *Punishment of misdemeanor, when not otherwise prescribed.*—Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$500, or by both.

347. *Willfully poisoning springs, etc.*—* * * Every person who willfully poisons any spring, well, or reservoir of water, is punishable by imprisonment in the State prison for a term not less than 1 nor more than 10 years.

370. *Definition of public nuisance.*—Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, * * * is a public nuisance.

371. *Unequal damage.*—An act which affects an entire community or neighborhood, or any considerable number of persons, as specified in the last section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

372. *Maintaining public nuisance a misdemeanor.*—Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

373a. *Refusal to abate public nuisance after notice.*—Every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and every person occupying or leasing the property or premises of another who maintains, permits, or allows a public nuisance to exist thereon, after reasonable notice in writing from a health officer or district attorney to remove, discontinue, or abate the same has been served upon such person, is guilty of a misdemeanor, and shall be punished accordingly; and the existence of such nuisance for each and every day after the service of such notice shall be deemed a separate and distinct offense, and it is hereby made the duty of the district attorney to prosecute all persons guilty of violating this section by continuous prosecutions until the nuisance is abated and removed.

374. *Depositing dead animals in streams, etc.*—Every person who puts the carcass of any dead animal or the offal from any slaughter pen, corral, or butcher shop into any river, creek, pond, reservoir, stream, * * * and every

person who puts any water-closet or privy, or the carcass of any dead animal, or any offal of any kind, in or upon the borders of any stream, pond, lake, or reservoir from which water is drawn for the supply of any portion of the inhabitants of this State, so that the drainage of such water-closet, privy, carcass, or offal may be taken up by or in such stream, pond, lake, or reservoir; or who allows any water-closet or privy, or carcass of any dead animal, or any offal of any kind, to remain in or upon the borders of any such stream, pond, lake, or reservoir within the boundaries of any land owned or occupied by him, so that the drainage from any such water-closet, privy, carcass, or offal may be taken up by or in such stream, pond, lake, or reservoir; or who keeps any horses, mules, cattle, swine, sheep, or live stock of any kind penned, corralled, or housed on, over, or on the borders of any such stream, pond, lake, or reservoir, so that the waters thereof become polluted by reason thereof; or who bathes in any such stream, pond, lake, or reservoir; or who by any other means fouls or pollutes the waters of any such stream, pond, lake, or reservoir, is guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in section 377.

374a. *Unlawful to dump garbage, etc., in navigable waters or in the Pacific Ocean.*—Any person who places, deposits, or dumps any garbage, swill, refuse, cans, bottles, paper, or vegetable matter, or the carcass of any dead animal, or the offal from any slaughter pen or butcher shop, or any trash or rubbish in or upon the navigable waters of this State, or who places, deposits, or loads the same upon any scow, barge, float, hulk, or any steam or sailing vessel, or any vessel of any kind, with intent that the same shall be dumped or deposited therefrom in or upon any of the navigable waters of this State, or of the Pacific Ocean without the State, at any point therein, within 20 miles of any point on the coast line of the State; and any captain or other person in charge of any scow, barge, float, hulk, or any steam or sailing vessel, or any vessel of any kind, who permits the same to be loaded with any garbage, swill, refuse, cans, bottles, paper, or vegetable matter, or the carcass of any dead animal, or the offal from any slaughter pen or butcher shop, or any trash or rubbish, with intent that the same shall be dumped or deposited therefrom in or upon any of the navigable waters of this State, or of the Pacific Ocean without the State, at any point therein, within 20 miles of any point on the coast line of the State, is guilty of a misdemeanor, and no scow, barge, float, hulk, or any steam or sailing vessel, or any vessel of any kind, upon which any garbage, swill, refuse, cans, bottles, paper, or vegetable matter, or the carcass of any dead animal, or the offal from any slaughter pen or butcher shop, or any trash or rubbish, has been loaded with the intent that the same shall be dumped or deposited therefrom upon any of the waters of the Pacific Ocean where permitted by this section, shall leave any point within the State unless it shall carry for the entire trip an inspector appointed by the State board of health, or where such point of departure is within a municipality, then by such municipality, and it shall be the duty of such inspector to enforce the provisions of this section, and the captain or other person in charge of any such scow, barge, float, hulk, steam, sailing, or other vessel so leaving without carrying such inspector during the entire trip is guilty of a misdemeanor: *Provided, however,* That this act shall not be construed to affect the discharge of any sewer system.

377b. *Violation of rules of State board of health relating to pollution of water.*—Any person who shall violate or refuse or neglect to conform to any sanitary rule, order, or regulation prescribed by the State board of health for the prevention of the pollution of springs, streams, rivers, lakes, wells, or other

waters used or intended to be used for human or animal consumption shall be guilty of a misdemeanor.

377c. *Violation of rules of State board of health as to pollution of ice.*—Any person who shall violate or refuse or neglect to conform to any sanitary rule, order, or regulation prescribed by the State board of health for the prevention of the pollution of ice or the sale or disposition of polluted ice offered, kept, or intended for public use or consumption, shall be guilty of a misdemeanor.

592. *Placing filth in canals, etc.*—Every person * * * who shall empty or place, or cause to be emptied or placed, into any such canal, ditch, flume, or reservoir [used for holding or conveying water for manufacturing, agricultural, mining, irrigating, generation of power, or domestic uses] any rubbish, filth, or obstruction to the free flow of the river, is guilty of a misdemeanor.

607. *Plowing up soil in bed or on sides of watercourse.*—Every person * * * who, between the 1st day of October and the 15th day of April of each year, plows up or loosens the soil in the bed or on the sides of any natural watercourse or channel, without removing such soil within twenty-four hours from such watercourse or channel; or who, between the 15th day of April and the 1st day of October of each year, shall plow up or loosen the soil in the bed or on the sides of such natural watercourse or channel, and shall not remove therefrom the soil so plowed up or loosened before the 1st day of October next thereafter, is guilty of a misdemeanor, and upon conviction, punishable by a fine not less than \$100 and not exceeding \$1,000, or by imprisonment in the county jail not exceeding two years, or by both; *Provided*, That nothing in this section shall be construed so as to in any manner prohibit any person from digging or removing soil from any such watercourse or channel, for the purpose of mining.

612. *Depositing sawdust, etc., in Humboldt Bay.*—Every person who throws, deposits, or permits another in his employ to throw or deposit, any sawdust, slabs, or refuse lumber, in any place where it may be carried or fall into the waters of Humboldt Bay, without first having constructed piers, bulkheads, dams, or other contrivances, approved by the board of supervisors of Humboldt County, to prevent the same from escaping into the channels of such bay, is guilty of a misdemeanor.

631. *Use of poison in taking fish.*—Every person who takes, kills, or destroys * * * by the use of any poisonous substance, any of the birds or animals mentioned in this chapter [includes fish], or who transports, buys, sells, or gives away, offers or exposes for sale, or has in his possession, any of the said birds or animals that have been taken, killed, or captured * * * by the use of any poisonous substance, whether taken in the State of California or shipped into the State from any other State, Territory, or foreign country, is guilty of a misdemeanor. * * *

631a. *Penalty.*—Every person found guilty of a violation of any of the provisions of section * * * 631, must be fined in a sum not less than \$25 nor more than \$500 or imprisonment in the county jail of the county in which the conviction shall be had not less than 25 days nor more than 150 days, or by both such fine and imprisonment.

635. *Discharging petroleum, acid, and other trade wastes into waters.*—Every person * * * who causes to be discharged or deposited, or suffers or permits to be discharged or deposited, or to pass, or who places where it can pass, in or into any of the waters of the State any petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous material, or substance, or any refuse, liquid or solid from any oil refinery, gas house, tannery, distillery, chemical works, mill, or factory of any kind, or any sawdust, shavings, slabs, edgings, or any factory refuse,

or any lime, any excelsus indicus, or any slag, or any other substance or material deleterious to fish or plant life is guilty of a misdemeanor and is punishable by a fine of not less than \$200 or by imprisonment in the county jail of the county in which said conviction shall be had not less than 59 days nor more than 150 days, or by both such fine and imprisonment; and all fines and forfeitures imposed or collected for any violation of the provisions of this section shall be paid into the State treasury to the credit of the fish and game preservation fund.

[REVISED POLITICAL CODE, 1915.]

2379. *Regulations of State board of health.*—It [State board of health] shall examine and have power to prevent the pollution of sources of public domestic water and ice supply. ° ° ° It shall have power to adopt and enforce rules and regulations for the execution of its duties under this section. ° ° °

[GENERAL LAWS, 1915, ACT NO. 2859,¹]

SECTION 1. *Title.*—This act shall be known as the public-health act and its provisions are to be liberally construed, with a view to effect its purpose of preventing by uniform measures the spread of contagious, infectious, and communicable diseases and to preserve and promote the health of the people of the State. Its provisions are not intended to repeal or supersede any statutes of the State now in force which are promotive of the general health and not in conflict with or repugnant to its provisions, but they shall be deemed supplemental to such statutes; and where the provisions of this act are not in conflict with and repugnant to such statutes they shall be construed consistently therewith and as continuations thereof.

SEC. 2 (as amended by Statutes, 1917, chap. 900). *Depositing of sewage, etc., in streams.*—It shall be unlawful to discharge, drain, or deposit, or cause or suffer to be discharged, drained or deposited, any sewage, garbage, feculent matter, offal, refuse, filth, or any animal, mineral, or vegetable matter or substance, offensive, injurious, or dangerous to health, into any springs, streams, rivers, lakes, tributaries thereof, wells or other waters used or intended to be used for human or animal consumption or for domestic purposes, or to maintain a sewer farm or to erect, construct, excavate, or maintain, or cause to be erected, constructed, excavated, or maintained, any privy, vault, cesspool, sewage treatment works, sewer pipes or conduits, or other pipes or conduits, for the treatment and discharge of sewage or sewage effluents or impure waters, gas, vapors, oils, acids, tar, or any matter or substance offensive, injurious, or dangerous to health, whereby the same shall overflow lands or shall empty, flow, seep, drain, condense into or otherwise pollute or affect any waters intended for human or animal consumption or for domestic purposes, or any of the salt waters within the jurisdiction of this State; or to add to, modify or alter any of the plant, works, system thereof or manner or place of discharge or disposal; or to erect or maintain any permanent or temporary house, camp, or tent, so near to such springs, streams, rivers, lakes, tributaries, or other sources of water supply, as to cause or suffer the drainage, seepage, or flow of impure waters, or any other liquids, or the discharge or deposit therefrom of any animal, mineral, or vegetable matter, to pollute such waters without a permit from the State board of health as hereinafter provided.

¹ Statutes, 1907, p. 893, as amended by Statutes, 1911, p. 565, and 1913, p. 796.

It shall also be unlawful for the owner, tenant, lessee, or occupant of any house boat or boat intended for or capable of being used as a residence, house, dwelling or habitation, or for the agent of such owner, tenant, lessee or occupant to moor or anchor the same or permit the same to be moored or anchored in or on any river or stream, the waters of which are used for drinking or domestic purposes by any city, town, or village within a distance of two miles above the intake or place where such city, town, or village water system takes water from such river or stream; *Provided, however,* That in the transportation of any such house boat on any such river or stream nothing herein contained shall prevent the owner, agent, tenant or occupant of such house boat from mooring or anchoring the same when necessary within the limits herein fixed and established; *Provided,* such house boat shall not remain moored or anchored within such limits for a longer period than one day.

Sec. 3 (as amended by Stats., 1917, chap. 600). *Petition for permission to discharge sewage, etc., into streams.*—Whenever any county, city and county, city, town, village, district, community, institution, person, firm or corporation shall desire to deposit or discharge, or continue to deposit or discharge, into any stream, river, lake, or tributary thereof, or into any other waters used or intended to be used for human or animal consumption or for domestic purposes, or into or upon any place the surface or subterranean drainage from which may run or percolate into any such stream, river, lake, tributary, or other waters, any sewage, sewage effluent, or other substance by the terms of section 2 of this act forbidden so to be deposited or discharged, or whenever any such county, city and county, city, town, village, district, community, institution, person, firm, or corporation shall desire to deposit or discharge, or continue to deposit or discharge, any sewage, sewage effluent, trade wastes or any animal, mineral, or vegetable matter or substance, offensive, injurious or dangerous to health, in any of the salt waters within the jurisdiction of this State, or to maintain a sewer farm or to permit the overflow of sewage onto any land whatever, or shall desire to erect, construct, excavate, or maintain any privy, vault, cesspool, sewage-treatment works, sewer pipe or conduits, or other pipes or conduits for the treatment and discharge of sewage, sewage effluents, or any matter offensive, injurious, or dangerous to the health, or shall desire to add to, modify, or alter any of the plant, works, or system or manner or place of discharge or disposal, he or it shall file with the State board of health a petition for permission so to do, together with a complete and detailed plan, description, and history of the existing or proposed works, system, treatment plant, and of such proposed addition to, modification, or alteration of any of the plant, works, system, or manner or place of discharge or disposal, such plans and general statement to be in such form and to cover such matters as the State board of health shall prescribe. Thereupon, a thorough investigation of the proposed or existing works, system, and plant, and all circumstances and conditions by it deemed to be material, shall be made by the State board of health. As a part of such investigation, and after 10 days' notice by mail to the petitioner, a hearing or hearings may be had before said board or an examiner appointed by it for the purpose. At such hearing or hearings witnesses who testify shall be sworn by the person conducting the hearing, and evidence, oral and documentary, may be required, a record of which shall be made and filed with said board. Upon completion of such investigation said board—

(a) If it shall determine as a fact that the substance being or to be discharged or deposited is such that under all the circumstances and conditions it may so contaminate or pollute such stream, river, lake, tributary, or other waters or lands on which it may be discharged, deposited, or caused to overflow, as to

endanger the lives or health of human beings or animals, or to constitute a nuisance, or does or may constitute a menace to public health or a nuisance, or that under all the circumstances and conditions it is not necessary so to dispose of such substance, the State board of health shall deny the prayer of such petition, and shall order petitioner to make such changes as the said State board of health shall deem proper for the purpose of this act. The State board of health may order the appointing of a competent person, to be approved by said board, and to be paid by said petitioner, who shall take charge of and operate such plant or system so as to secure the results demanded by the State board of health; and said board may order such repair, alteration, or additions to the existing system, plant, and works that the sewage or substance being intended to be discharged or disposed of shall not contaminate or pollute streams or other water supplies, or endanger the lives, health, or comfort of human beings or animals; and said board may order such changes of method, manner, and place of disposal and the installation of such treatment works that streams and other water supplies will not be polluted or contaminated and the works and disposal shall not constitute a menace to health of human beings or animals, or a nuisance; which orders shall designate the period within which the desired changes [changes] are to be made: *Provided, however,* That a temporary permit may be issued by the State board of health for said period to permit compliance with such order or orders.

(b) If it shall determine, as a fact, that the substance being or to be discharged or deposited is not such that under all the circumstances and conditions it will so contaminate or pollute such stream, river, lake, tributary, or other waters, as to endanger the lives or health of human beings or animals, or to constitute a nuisance, and that under all the circumstances and conditions it is necessary so to dispose of such substance, it shall grant to petitioner a permit authorizing petitioner so to deposit or discharge or to continue to deposit or discharge such substance: *Provided, however,* That such permit shall not be construed to permit any act forbidden by any provision of the laws of this State relative to the preservation or propagation of fish or game, or relative to the deposit of debris into the streams of the State, or relative to the obstruction of navigation: *And provided further,* That all permits issued hereunder shall be revocable by said board at any time or subject to suspension if said board shall determine, as a fact, that the substance discharged or deposited by virtue thereof causes or may cause a contamination or pollution of waters or land that does or may endanger the lives or health of human beings or animals, or does or may constitute a nuisance: *And provided, also,* That nothing contained in this act shall be construed as limiting or denying the power of any incorporated city, city and county, town, or village to declare, prohibit, and abate nuisances, or as limiting or denying the power of the State board of health to declare or abate nuisances.

The State board of health and its inspectors shall at any and all times have full power and authority to, and shall be permitted to, enter into and upon any and all places, inclosures, and structures for the purpose of making, and to make, examinations and investigations to determine whether any provision of this act is being violated. Whenever any petitioner shall be granted any permit by said board and under the provisions of this act, such petitioner shall furnish to said board upon demand a complete report upon the condition and operation of the system, plant or works, which report shall be made by some competent person designated for the purpose by said board, and at the sole cost and expense of the holder of the permit.

Any county, city and county, city, town, village, district, community, institution, person, firm, or corporation, who shall deposit, discharge or continue to

deposit or discharge, into any stream, river, lake, or tributary thereof, or into any other waters, used or intended to be used for human or animal consumption or for domestic purposes, or into or upon any place the surface or subterranean drainage from which may run or percolate into any such stream, river, lake, tributary or other waters, or into any of the salt waters, or lands, within the jurisdiction of this State, any sewage, sewage effluent, or other substance by the terms of section 2 of this act forbidden to be so deposited or discharged, without having an unrevoked permit so to do, as in this act provided, may be enjoined from so doing by any court of competent jurisdiction at the suit of any person or municipal corporation whose supply of water for human or animal consumption or for domestic purposes is or may be affected, or by the State board of health.

Anything done, maintained, or suffered, in violation of any of the provisions of section 2 or section 3 of this act shall be deemed to be a public nuisance, dangerous to health, and may be summarily abated as such.

Every county, city and county, city, town, village, district, community, institution, firm, corporation, or person, or any officer, employee, or agent thereof upon whom the duty to act is cast, who shall violate any provision or part thereof of section 2 or 3 of this act, or who shall fail to obey, observe or comply with any direction, order, requirement or demand or any part or provision thereof of the State board of health, or who aids or abets any such county, city and county, city, town, village, district, community, institution, firm, corporation, or person, or any officer, employee or agent thereof in any failure to obey or comply with the provisions of this act or the orders of the State board of health as provided in this act, shall become liable for and forfeit to the State of California the penal sum of not more than \$1,000 to be fixed by the court for each and every offense. The continued existence of any violation of this act for each and every day beyond the time stipulated for compliance with any of its provisions or of any order of the State board of health as provided herein shall constitute a separate and distinct offense. All penalties are to be recovered by the State in civil action brought by the State of California and such penalties when collected shall be paid into the general fund of the State treasury.

Every officer, agent, or employee of any county, city and county, city, town, village, district, community, institution, firm, corporation, or person who shall violate or fail to comply with any of the provisions of section 2 or section 3 of this act or with the order or orders of the State board of health or any part thereof, or who aids or abets in any failure to observe and comply with any such provision, order, or part thereof, is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000 or by imprisonment in the county jail not exceeding one year or by both such fine and imprisonment, for each offense. Each day's violation of this provision shall constitute a separate and distinct offense.

Sec. 4. Pollution by live stock.—It shall be unlawful to cause or permit any horses, cattle, sheep, swine, poultry, or any kind of live stock or domestic animals, to pollute the waters, or tributaries of such waters, used or intended for drinking purposes by any portion of the inhabitants of this State.

Sec. 5. Bathing in streams.—No person shall bathe or wash clothes in any spring, stream, river, lake, reservoir, well, or other waters which are used or intended for drinking purposes by the inhabitants of the vicinage or of any city, city and county, or town of this State.

Sec. 6. Ice, pollution of.—Ice offered or intended for public use or consumption shall be kept or stored in clean places free from all filth, offal, refuse, and polluted waters, and separate and removed from contact with animal or vegetable matter, and not in proximity to any cesspool, privy vault, or sewer,

nor in places where such ice may be subject to contamination from, or the action of acids, oils, noxious, offensive, or injurious gases, smoke or vapors, and all ice kept or stored in violation of this section shall be deemed polluted ice and not fit for human consumption; and it shall be unlawful to sell, offer for sale, or store for sale such polluted ice.

SEC. 7. *Ice from breweries, etc., not to be sold.*—It shall be unlawful to sell, offer, or keep for sale for public use or consumption, ice which shall have been used for the cooling of malt, vinous, or spirituous liquors, or for the refrigeration of butter, milk, meat, or any animal or vegetable matter or substances, or which shall have been taken from any asylum, hospital, sanitarium, sick room, slaughterhouse, or any place where human or animal remains have been kept or deposited.

SEC. 8. *Transportation of ice.*—In the transportation or carriage of ice intended for public use or consumption care shall be taken to prevent contact with filth, offal, and other refuse, and contamination from animal and vegetable matter, and from offensive and noxious oils, acids, and other substances injurious, dangerous, or offensive to health.

SEC. 9. *Polluted ice.*—No person, firm, company, or corporation shall make or permit to be made, or offer or permit to be offered for sale for public use or consumption, any ice manufactured from impure or polluted water, or natural ice cut or taken from any corrupt or impure waters or water source; nor taken or manufactured from any waters or source of water supply after notice from the State board of health, or its secretary, that such waters are impure or polluted.

SEC. 10. *Inspection of ice plants.*—In the interest of the public health every health officer or health inspector, upon proper demand and notice of his authority, shall be permitted, during office hours, to enter and inspect the works, premises, sources of supply, and places of storage of any person, firm, company, or corporation, maintaining, selling, or offering for sale, water or ice for human use or consumption, and it shall be unlawful for any person, firm, company, or corporation to refuse to permit a reasonable inspection or investigation of such works and premises or the ice and water kept or stored therein, or to impede or obstruct such officer during such investigation.

* * *

[GENERAL LAWS, 1915, ACT NO. 4348B.1]

SECTION 1 (as amended by Stats. 1917, p. 1562). *Unlawful to supply polluted water.*—It shall be unlawful for any person, firm, corporation, public utility, municipality, or other public body or institution to furnish or supply or to continue to furnish or supply water used or intended to be used for human consumption or for domestic uses or purposes which is impure, unwholesome, unpotable, polluted, or dangerous to health, to any person in any county, city and county, municipal corporation, village, district, community, hotel, temporary or permanent resort, institution, or industrial camp.

SEC. 2 (as amended by Stats. 1917, p. 1562). *Petition for furnishing water, etc.*—Whenever any person, firm, corporation, public utility, municipality, or other public body or institution shall desire to furnish or supply, or to continue to furnish or supply water for domestic uses or purposes to any person in any district, community, hotel, temporary or permanent resort, institution, or industrial camp, or shall desire to install, add to, modify, or alter any of the plant, works, system, or sources of supply, it or he shall file as herein provided with the State board of health a petition for permission so to do, together with complete plans and specifications and a statement containing a

¹ Statutes, 1913, p. 793, as amended by 1915, p. 1282, and 1917, p. 1562.

general description and history of the existing or proposed water-supply system of proposed changes therein showing the geographical location thereof with relation to the source of the water supply and all the sanitary and health conditions surrounding and affecting said supply and the works, system, and plant, such plans, specifications, and general statement to be in such form and to cover such matters as the State board of health shall prescribe. Thereupon a thorough investigation of the proposed or existing works, system, plant, water supply, and all other circumstances and conditions by it deemed to be material must be made by the State board of health: *And provided, however,* That no person, firm, or corporation supplying water for domestic purposes or use on his or its private property upon which there is no industrial camp, hotel, temporary or permanent resort using said water, or supplying less than 200 service connections, shall be required to apply for a permit under the provisions of this section, except upon formal complaint filed with the State board of health.

As a part of such investigation, and after 10 days' notice by mail to the petitioner, a hearing or hearings may be had before said board or an examiner appointed by it for the purpose. At such hearing or hearings witnesses who testify shall be sworn by the person conducting the hearing, and evidence, oral and documentary, may be received, a record of which shall be made and filed with said board. Upon completion of such investigation said board:

(a) If it shall determine as a fact that the water being furnished or to be furnished or supplied is such that under all the circumstances and conditions it is impure, unwholesome, or unpotable, or may constitute a menace or danger to the health or lives of human beings, or that under all the circumstances and conditions the existing or proposed works, system, plant, or water supply or proposed modifications therein are unhealthful or insanitary, or not suited to the production and delivery of healthful, pure, and wholesome water, said board shall order the petitioner to make such changes as it deems necessary to secure a continuous supply of pure, wholesome, potable, and healthful water. Said board may order the appointing of a competent person, to be approved by the State board of health and paid by said petitioner, who shall take charge of and operate such plant or system so as to secure the results demanded by the State board of health; and it may order such repair, alteration, or addition to the existing system, plant, and works that the water furnished or supplied shall at all times be pure, wholesome, potable, and shall not endanger the lives or health of human beings; and said board may order such changes of source of the water supply or installation of purification and refining works and such other measures as shall insure a continuous supply of pure, wholesome, and potable water which shall not endanger the lives and health of human beings; which order shall designate the period within which the required changes are to be made: *Provided, however,* That a temporary permit may be issued by the State board of health for said period to permit the petitioner to comply with such order or orders.

(b) If it shall determine, as a fact, that the water being furnished or supplied to such human beings is such, that under all the circumstances and conditions, it is pure, wholesome, and potable and does not endanger the lives or health of human beings, it shall grant to petitioner a permit authorizing petitioner to furnish or continue to furnish or supply such water to such human beings: *Provided, however,* That all permits issued hereunder shall be revocable or subject to suspension by said board at any time that it shall determine, as a fact, that the water being supplied or furnished is or may become impure, unwholesome or unpotable or does or will endanger the lives or health of human beings. The State board of health and its inspectors shall, at any and all reasonable times, have full power and authority to, and shall be permitted to

enter into and upon any and all places, property, inclosures, and structures for the purpose of making and to make examinations and investigations to determine whether any provision of this act is being violated. The holder of any permit granted by said board under the provisions of this act may, at any time, by order of said board be required to furnish to said board, upon demand, a complete report upon the condition and operation of the water supply, plant, works, or system owned, operated, or controlled by it, which report shall be made by some competent person designated for the purpose by said board, and at the sole cost and expense of the holder of the permit. Any person, firm, corporation, public utility, municipality or other public body or institution who shall furnish or supply or continue to furnish or supply water used or intended to be used for human consumption or for domestic uses or purposes, or shall install additions to, modifications, or alterations in any of the existing plant, works, system, or sources of supply without having an unrevoked permit from the State board of health so to do, as in this act provided, may be enjoined from so doing by any court of competent jurisdiction, at the suit of any person or persons, firm, corporation, municipal or other public corporation whose supply of water for human consumption or for domestic uses or purposes is taken or received from or supplied or furnished by any such water furnishing or distributing person, firm, corporation, public utility, or municipality or other public body or institution, or it or he may be enjoined at the suit of the State board of health in the same manner. Anything done, maintained, or suffered in violation of any of the provisions of this act shall be deemed to be a public nuisance, dangerous to health, and may be summarily abated in the manner provided by law, and it shall be the duty of all and every public officer or officers, body or bodies lawfully empowered so to do to immediately abate the same.

Every person, firm, corporation, public utility, municipality, or other public body or institution, or officer, employee or agent thereof upon whom the duty to act is cast, and every person who shall violate any provision or part thereof of this act, or who shall fail to obey, observe, or comply with any direction, order, requirement, or demand, or any part or provision thereof, of the State board of health, or who procures, aids, or abets any such person, firm, corporation, public utility, municipality, or other public body or institution, or officer or employee or agent thereof, in any failure to obey or comply with the provisions of this act or the orders of the State board of health as provided in this act, shall become liable for and forfeit to the State of California the penal sum of not more than \$1,000 for each separate offense. The continued existence of any violation of this act for each and every day beyond the time stipulated for compliance with any of its provisions or of any order of the State board of health as provided herein shall constitute a separate and distinct offense. All penalties are to be recovered by the State in civil action brought by the State of California and such penalties when collected shall be paid into the general fund of the State treasury.

Every officer, agent, or employee of any person, firm, corporation, public utility, municipality, or other public body or institution or person who shall violate or fail to comply with any of the provisions of this act or the order of the State board of health or any part thereof, or who procures, aids, or abets in any failure to observe and comply with any such provision, order, or part thereof, is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000 or by imprisonment in the county jail not exceeding one year or by both such fine or imprisonment, for each offense. Each day's violation of this provision shall constitute a separate and distinct offense.

[GENERAL LAWS, 1915, ACT NO. 4365.]

SECTION 1. Privies forbidden.— * * * It shall be unlawful for any person to erect, construct, excavate, or maintain on or near the banks of any river or stream and within 2 miles above the intake of any water supply used for domestic or drinking purposes in any city, town, or village any privy, vault, cesspool, sewer pipe, or conduit which shall cause or suffer to be discharged into said stream or river any sewage, garbage, feculent matter, offal, filth, refuse, or any animal, mineral, or vegetable matter, or substance offensive, injurious, or dangerous to health.

SEC. 2. Penalty.—Any person who violates any of the provisions of section 1 of this act is guilty of a misdemeanor. Each day's violation of any of the provisions of said section 1 shall constitute a separate and distinct offense.

SEC. 3. Nuisances.—Any privy, vault, cesspool, sewer pipe, or conduit erected, constructed, excavated, or maintained on or near the banks of any river or stream within 2 miles above the intake of any water supply used for drinking or domestic purposes in any city, town, or village, which shall cause or suffer to be discharged therefrom sewage, garbage, feculent matter, offal, refuse, filth, or any animal, mineral, or vegetable matter or substance offensive, injurious, or dangerous to health into such river or stream, and any house boat or boat intended for or capable of being used as a residence, house, dwelling, or habitation, which shall for more than one day be moored or anchored in or upon any river or stream within 2 miles above the intake of any water supply used for domestic or drinking purposes in any city, town, or village are hereby declared to be public nuisances; and it is hereby made the duty of any and all sheriffs, constables, policemen, and health officers to immediately abate said nuisance.

[STATUTES OF 1917, p. 42.]

SECTION 1. When taking of oysters is unlawful.—It shall be unlawful to take oysters, clams, quahangs, mussels, or other shellfish used or intended to be used for human consumption from any tidal waters, flats, areas, or sources from which the taking of such shellfish shall be determined to be a menace to health as hereinafter provided.

SEC. 2. Examination of tidal waters, etc., by State board of health.—The State board of health may and is hereby empowered to examine any tide waters, flats, areas, or sources from which oysters, clams, quahangs, mussels, or other shellfish may be taken, and to determine whether such waters, flats, areas, or sources are subject to sewage contamination, and to determine whether the taking of such shellfish from such waters, flats, areas, or sources does or may constitute a menace to the lives and health of human beings. Upon the determination by said State board of health that such waters, flats, areas, or sources are or may be subject to sewage contamination, and that the taking of shellfish therefrom does or may constitute a menace to the lives and health of human beings, said board shall ascertain as accurately as may be the bounds of such contamination and shall cause the posting of notices describing the bounds of the tidal flats, waters, areas, or sources from which the taking of shellfish shall be unlawful. The fact of the posting of such notices shall be published once a week for four successive weeks in some newspaper of general circulation, published in the county in which such waters, flats, areas, or sources are situated, if there be one, and if there be none, then in a newspaper published in an adjoining county.

* Statutes of 1909, p. 110.

Sec. 3. Enforcement.—It shall be the duty of the State board of health to enforce the provisions of this act and its inspectors and employees are hereby empowered to enter upon public or private property upon which shellfish may be located at all times for the purposes of this act.

Sec. 4. Penalty.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$25 nor more than \$500 or by imprisonment for a term of not more than six months, or by both such fine and imprisonment, but such penalties shall not be incurred until the fact of such prohibition shall have been published for four successive weeks, as above provided. Each day's violation shall constitute a separate and distinct offense.

[STATUTES OF 1917, p. 70.]

SECTION 1. Swimming pools under supervision of State board of health.—The State board of health shall have supervision over the sanitation, healthfulness, and cleanliness and safety of swimming pools, bathhouses, public swimming and bathing places, and all related appurtenances and is hereby empowered to make and enforce such rules and regulations pertaining thereto as it shall deem proper.

Sec. 2. Permit required for operation of swimming pool.—It shall be unlawful for any person, persons, firm, corporation, institution, or municipality in any district, town, city, county, or city and county, to construct or to add to or modify or to operate or to continue to operate any swimming pool, public bathhouse, bathing or swimming place, or any structure intended to be used for swimming or bathing purposes without an unrevoked permit so to do from the State board of health. * * *

Sec. 5. Swimming pools operating contrary to act nuisances.—Any swimming pool, public swimming or bathing place or places, constructed, operated, or maintained contrary to the provisions of this act are hereby declared to be public nuisances, dangerous to health. Such nuisances may be abated or enjoined in an action brought by the local or State board of health, or they may be summarily abated in the manner provided by law for the summary abatement of public nuisances dangerous to health.

Sec. 6. Penalty.—Any person, firm, or corporation, whether as principal or agent, employer or employee, who violates any of the provisions of this act shall be guilty of a misdemeanor, and each day that conditions or actions in violation of this act shall continue shall be deemed to be a separate and distinct offense, and for each offense, upon conviction, he shall be punishable by a fine of not less than \$25 nor more than \$500, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

COLORADO.

[COURTSHIP'S COLORADO STATUTES, 1913.]

1816. Polluting watercourses.—If any person * * * shall in anywise pollute or obstruct any watercourse, lake, pond, marsh, or common sewer, or continue such obstruction or pollution so as to render the same offensive or unwholesome to the county, town, village, or neighborhood thereabouts; every person so offending shall, upon conviction thereof, be fined not exceeding \$300; and every such nuisance may, by order of the district court before whom the conviction may take place, be removed and abated by the sheriff of the proper county, and any inquest and judgment thereon had under the provisions of any law authorizing a writ of *ad quod damnum* shall be no bar to a prosecution under this section.

1817. *Putting refuse matter from slaughterhouses, etc., into streams.*—If any person or persons shall hereafter throw or discharge into any stream of [or] running water, or into any ditch or flume in this State, any obnoxious substance, such as refuse matter from slaughterhouse or privy, or slops from eating houses or saloons, or any other fleshy or vegetable matter which is subject to decay in the water, such person or persons shall, upon conviction thereof, be punished by a fine not less than \$100 nor more than \$500 for each and every offense so committed.

1818. *Unlawful to flow oil into stream.*—If any person or persons, corporation or corporations, shall hereafter empty or cause to be emptied, or allow the emptying or flowing of oil, petroleum, or other oleaginous substance into any of the waters of this State, or deposit or cause the same to be deposited at such distance that the same may be carried into such waters by natural causes, such person or persons, corporation or corporations, so offending shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$1,000 or imprisonment in the county jail not exceeding six months, or both such fine and imprisonment, for each such offense.

2083. *Unlawful to defile waters of Platte River and Bear Creek.*—It shall be unlawful for any person to deposit into the channel of the South Platte River or Bear Creek, or any of their tributaries above the mouth of Clear Creek, or between or upon the banks of said streams, any unwholesome matter or substance whatever tending to the defilement or pollution of the water of said streams, or to allow the drainage from any sewer, drain, or cesspool to drain into or percolate into said streams or their tributaries, or any of them, or to permit any dead animal or decaying vegetable matter to be placed or left within a distance of 300 feet of the banks of any said streams or their tributaries, or to do any other act or thing whereby the water of said streams might become polluted or unfit or unwholesome for human consumption: *Provided*, That the disturbances of water by placer mining or tailings from ore reduction mills flowing into any of said streams or tributaries shall not be construed as defilement or pollution of the water thereof.

2084. *City of Denver given jurisdiction over streams.*—The city and county of Denver is hereby given jurisdiction over said streams to protect their purity under section 1 of this act [sec. 2083 above], and is hereby authorized to provide by ordinance for the patrol of said streams and for the punishment of offenders against the provisions of this act.

2758. *Use of poison for taking fish.*—No * * * poisonous or stupefying substance whatever shall be used in the taking or killing of any fish, nor placed in any waters containing fish * * *.

2815. *Poisonous substances, etc., to be destroyed.*—Every * * * poisonous or stupefying substance or device used or intended for use in taking or killing game or fish in violation of this act [secs. 2814-2832] and * * * kept or found in or upon any of the waters in this State or upon the shores thereof * * * is hereby declared to be a public nuisance and may be abated and summarily destroyed by any person, and it shall be the duty of every officer authorized to enforce this act to seize and summarily destroy the same, and no prosecution or suit shall be maintained for such destruction * * *.

2820. *Sawdust, tailings, etc., not to be allowed to run into streams containing fish.*—No sawdust, tailings, or other deleterious or poisonous substance shall be allowed to run or pass into or pollute any public waters containing fish, or deposited or left where it may be carried by natural causes into such waters, in such quantities as to destroy or be detrimental to the fish or spawn therein, except as hereinafter provided.

2822. *Action to abate nuisance of pollution of streams.*—Whenever any such * * * pollution is alleged to exist, the commissioner, any citizen of the State, or the owner or operator of such * * * industry, may file a petition in the district court of the county in which the * * * pollution is alleged to exist or originate, or into which any of the polluted water flows, for the purpose of having an equitable determination of the fact, nature, and extent of such an alleged * * * pollution and the remedy to be applied, if any, and a temporary injunction may issue upon notice, if the fact of * * * pollution be evident and the necessity urgent. Issues shall be made up as in other civil actions.

2823. *By whom action may be brought, etc.*—The action may be brought by the [game and fish] commissioner or a citizen of the State in the name of the people of the State on the relation of such person, but no such action shall be brought by a citizen without the consent of the commissioner, the attorney general, or the district attorney of the district. * * *

2824. *When owner brings action.*—If the action is brought by the owner or operator, the people of the State shall be made defendants, and service of the summons shall be made upon the commissioner, and a cross petition may be filed with the same effect as an original petition.

2825. *Court shall determine controversy.*—On final hearing the court shall, without the intervention of a jury, determine if such * * * pollution exists and, if so, the cause, nature, and extent thereof, the injurious effect, if any, upon the fish and their propagation, the means adopted, if any, by such owner or operator to obviate or prevent the same, the practicability or otherwise of more efficient means to prevent injury therefrom, and any other facts necessary to form an intelligent judgment of the public necessity and importance of the industry concerned as compared with the like necessity and importance of such waters as a source of fish supply if unaffected thereby, and having due regard to the public welfare and such constitutional and legal rights as may exist, may order the adoption by the owner or operator of such means as may be reasonable and practicable to prevent or lessen the injurious effect of the same, or may * * * perpetually enjoin the operations which cause the injury, or render such other judgment as the right of the case may require. In determining the questions aforesaid the court shall not be precluded from considering the other beneficial uses to which such waters are or may be applied.

2828. *When injury is later increased or diminished.*—In the event of a change in the cause, extent, or nature of such injury, either increasing or diminishing the effect thereof, either party may at any time thereafter file a supplemental petition in the district court where the cause was tried and have such increased or diminished effect determined and the judgment modified accordingly; but the facts originally found shall not be retried upon such supplemental petition, nor shall the original judgment, whether finally rendered in such court or the supreme court, be modified or changed except as required by such changed conditions.

2832. *When enforced by criminal prosecution.*—Nothing in this division [secs. 2814-2832] shall prevent the enforcement of this act by criminal prosecution in the absence of the equitable proceeding herein provided for, or during the pendency of the same, unless the court in which such equitable proceeding is pending shall for good cause shown restrain such criminal prosecution, which it may do, nor shall anything in this division affect any existing right for the prevention or redress of private injuries or wrongs.

2876 (as amended by chapter 84, Session Laws of 1913). *Penalty for use of poisonous substance in taking fish.*—Every person using * * * poisonous

or stupefying substance * * * in violation of this act (secs. 2874-2884) shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

4214. *Washing down tailings, etc.*—In no case shall any person or persons [engaged in mining] be allowed to flood the property of another person with water or wash down the tailings of his or their sluice upon the claim or property of other persons, but it shall be the duty of every miner to take care of his own tailings, upon his own property, or become responsible for all damages that may arise therefrom.

5034. *Dead animals not to be put in rivers, etc.*—If any person or persons shall put any dead animal or part of the carcass of any dead animal into any lake, river, creek, pond, * * * and if the owner or owners thereof shall knowingly permit the same to remain in any of the aforesaid places, to the injury of the health or to the annoyance of the citizens of this State, or any of them, every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a sum not less than \$5 nor more than \$50, together with the costs of prosecution, and in default of the payment thereof shall be imprisoned in the county jail of the county in which such conviction may be had, not exceeding 10 days, to be imposed by any court of competent jurisdiction, and every 24 hours said owner may permit the same to remain after such conviction shall be deemed an additional offense against the provisions of this act, and upon conviction thereof shall forfeit and pay a further sum of not less than \$10 and not more than \$20, together with the costs of prosecution, to be recovered as aforesaid, and in default of the payment thereof be imprisoned as aforesaid not more than 30 days, or be punished by both such fine and imprisonment, in the discretion of the court.

6525. *Protection of water supplies of towns from pollution.*—The city council and board of trustees in towns shall have the following powers:

Sixty-eighth. They shall have power to construct or authorize the construction of * * * waterworks, without their limits, and for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works, and all reservoirs, streams, trenches, pipes, and drains, used in and necessary for the construction, maintenance, and operation of the same, and over the stream or source from which the water is taken, for 5 miles above the point from which it is taken; and to enact all ordinances and regulations necessary to carry the power herein conferred into effect.

6811. *Board of waterworks may prevent pollution of city's water supply.*— * * * For the purpose of maintaining and protecting * * * waterworks from injury, and the water from pollution, the jurisdiction of said board [board of waterworks of municipality] shall extend over the territory occupied by said works, and all reservoirs, streams, trenches, pipes, and drains, used in and necessary for the construction, maintenance, or operation of the same, and over the stream or source from which the water is taken for 5 miles above the point from which it is taken. It shall have power to make all needful rules and regulations concerning the use of water supplied by said waterworks, and for carrying into effect the powers herein granted.

* * *

[ACTS OF 1915, CHAP. 150.]

Sec. 3. *Examinations of samples of suspected water.*—It shall be the duty of the State chemist to make * * * sanitary chemical and bacteriological analyses of samples of water from the water supply of towns or school districts

upon the request of the authorities of the same, whenever such water supplies are suspected of being contaminated. * * *

CONNECTICUT.

[REVISED STATUTES, 1902.]

1323 (as amended by acts of 1906, chap. 38). *Pollution of water of reservoir.*—Every person * * * who shall bathe in any reservoir from which the inhabitants of any town, city, or borough are supplied with water, or in any lake, pond, or stream tributary to such reservoir, or who shall cast any filthy or impure substance into said reservoir, or any of its tributaries, or commit any nuisance in or about it or them, shall be fined not more than \$100, or imprisoned not more than six months or both.

2514. *Pollution of streams.*—Said board [State board of health] is empowered to investigate and ascertain as far as practicable all facts in relation to the pollution of streams and natural waters of this State by artificial causes to determine the sanitary and economic effects of such pollution, may enter upon lands, buildings, and premises, as may be necessary for their investigations, may institute and conduct needful experiments pertaining thereto, and may summon witnesses, administer oaths, and hear evidence relating to such matters. Said board shall annually make a written report to the governor of its operations under this section.

2515. *Treasurer to pay on controller's warrant.*—The treasurer shall pay to said board of health for the purposes of such investigations and experiments, upon the comptroller's warrant, in such sums as the certificate of the board with proper vouchers annexed may certify, a sum not exceeding \$2,500.

2528. *Jurisdiction over streams for health purposes.*—The health officer of a town, city, or borough, contiguous to any stream or body of water which is not wholly within the limits of said town, city, or borough, shall have jurisdiction over such stream or body of water and the islands situated therein.

2594. *Pollution of waters.*—Every person who shall put or leave a dead animal or carcass in a pond, spring, or reservoir, the water of which is conveyed to any building, or who shall wilfully put and leave in any of the waters of this State a dead animal, shall be fined not more than \$50, or imprisoned not more than 30 days.

2595. *Penalty for polluting drinking water.*—Every person who shall put anything into a well, spring, fountain, cistern, or other place from which water is procured for drinking or other purposes, with the intent to injure the quality of said water, shall be fined not more than \$500, or imprisoned not more than six months.

2596. *Analysis of water.*—Town, borough, and city health officers shall, when in their judgment health is menaced or impaired through a water supply, send, subject to the approval of the county health officer, samples of such water to the State board of health for examination and analysis, and the expense of such examination and analysis shall be paid out of the funds appropriated to said board to investigate the pollution of streams.

2597. *Cutting of ice regulated.*—Every person who shall sell or offer to sell for family, hotel, boarding-house, restaurant, or saloon use, ice cut or taken from a pond, lake, or stream other than a river, into which any sewer empties, or from such part of a river as is below and within two miles of the point where the discharge from any sewer enters such river, or ice cut from a body or stream of water within 200 feet from where any house drain enters such body or stream of water, or ice cut from any body of water or stream the

water or ice from which has been condemned as unfit for use or dangerous to public health by the local health officer of the town, city, or borough where such body of water or stream is located, or ice which has been placed in a yard, building, or cart, with ice taken from any of the foregoing sources, shall be fined \$50, or imprisoned not more than 60 days, or both. Every person aggrieved by an order issued or made by a health officer under the provisions of this section may appeal, within two weeks from the date of such order, in the manner provided for appeals from the orders of town health officers.

2508. *Location of cemeteries.*—No cemetery or place of sepulture shall hereafter be located or established within one-half mile of any reservoir from which the inhabitants of a town, city, or borough are supplied with water, nor shall such reservoir be located or established within one-half mile of a cemetery or place of sepulture unless the superior court of the county wherein such cemetery or place of sepulture or reservoir is located shall, upon application and notice, find that such cemetery or place of sepulture or such reservoir so proposed to be located is of public convenience and necessity and will not be detrimental to the public health.

2509 (as amended by acts of 1909, chap. 137). *Relief from pollution by injunction.*—Whenever any land or building is so used, occupied, or suffered to remain that it is a source of pollution to any river, brook, or water which flows into any lake, pond, or water from which ice is procured for domestic use or for use as an article of merchandise, and such ice is liable to pollution therefrom, or whenever any land or building is so used, occupied, or suffered to remain that it is a source of pollution to the water stored in a reservoir used for supplying residents of a city, town, or borough with water or ice, or to any source of supply to such reservoir, or when such water or ice is liable to pollution in consequence of the use of the same, either the authorities of such town, city, or borough, or the county or town health officer, or the person, firm, or corporation having charge of such reservoir, or the right to procure ice therefrom, may apply for relief to the superior court in the county where such reservoir or water is located, and said court may make any order in the premises, temporary or permanent, which, in its judgment, may be necessary to preserve the purity of such water or ice. Such city, town, borough, or company, by its officers or agents duly appointed, or the county or town health officer, may, at all reasonable times, enter upon and inspect any premises within the watershed tributary to such water supply or waters from which such ice is procured and, if any nuisance likely to pollute such water or ice shall be found therein, such officers may abate such nuisance after reasonable notice to the owners or occupants of such premises and their refusal or neglect to abate the same, and such town, city, borough, or company shall be liable for all unnecessary or unreasonable damage done to such premises.

2600 (as amended by acts of 1903, chap. 192). *Power to take lands and streams.*—Any city, town, borough, or corporation authorized by law to supply the inhabitants of any city, town, or borough with pure water for public or domestic use may take and use such lands, springs, streams, or ponds, or such rights or interests therein, as the superior court, or any judge thereof in vacation, may, on application, deem necessary for the purposes of such supply. For the purpose of preserving the purity of such water and preventing any contamination thereof such city, town, borough, or corporation may take such lands or rights as the superior court or any judge thereof in vacation may, on application, deem necessary therefor. Compensation shall be made to all persons entitled thereto in the manner provided by section 2601.

2601 (as amended by acts of 1903, chap. 192). *Compensation for property taken.*—In all cases where the law requires compensation to be made to any

person whose rights, interests, or property are injuriously affected by said orders, such court, or judge, shall appoint a committee of three disinterested freeholders of the county who shall determine and award the amount to be paid by such authorities before such order is carried into effect.

2002. *Pollution of reservoirs, penalty.*—No person, after notice shall have been posted that any reservoir, or any lake, pond, or stream tributary thereto, is used for supplying the inhabitants of a town, city, or borough with water, shall wash any animal, clothing, or other article therein. No person shall throw any noxious or harmful substance into such reservoir, lake, pond, or stream, nor shall any person, after receipt of written notice from any county or town health officer having jurisdiction that the same is detrimental to such water supply, suffer any such substance to be placed upon land owned, occupied, or controlled by him, so that the same may be carried by rains, or freshets, into the water of such reservoir, lake, pond, stream, or drain, or allow to be drained any sewage from said land into such water. Every person who shall violate any provision of this section shall be fined not more than \$100, or imprisoned not more than 30 days, or both.

2003. *Appointment of special police.*—The governor may, upon the application of such town, borough, city, or company, commission during his pleasure one or more persons who, having been sworn, may act as policemen for the purpose of preventing and abating nuisances and protecting such water supply from contamination; such policemen shall arrest without previous complaint and warrant any person for any offense under the provisions of any law for the protection of water supplies, when the offender shall be taken or apprehended in the act, or on the speedy information of others; and all persons so arrested shall be immediately presented before proper authority. Every such policeman shall, when on duty, wear in plain view a shield bearing the words "Special police" and the name of the town, city, borough, or company for which he is commissioned.

2004. *Special reports by town health officer.*—Every town health officer shall, if requested in writing by any such town, city, borough, or company, report to such town, city, borough, or company in writing every case of cholera or typhoid fever within such portion of his jurisdiction as may be designated in such request, within 12 hours after the same shall come to his knowledge or attention; and such officer shall be paid a reasonable sum for each report by the party making such request.

2005. *Power to make regulations concerning reservoirs.*—The common council of a city, or the warden and burgesses of a borough, may make, alter, and repeal ordinances to regulate and prevent fishing, trespassing, and all sorts of nuisances in and upon the reservoir property of such city or borough in whatever town said property may be situated. The violations of any such ordinance shall be a misdemeanor, for which the common council, or the warden and burgesses, as the case may be, may impose penalties and forfeitures. All such penalties and forfeitures shall be to the use of the city or borough imposing the same, and may be recovered in either a civil action brought in the name of the city or borough, or a criminal prosecution brought before any court having jurisdiction over the offense; *Provided*, That no person shall suffer both a criminal and civil prosecution for one breach of any ordinance.

2006. *Protection of reservoir property.*—The common council of any city or the warden and burgesses of any borough may appoint special constables to protect reservoir property and to execute any ordinances passed under the preceding section and the laws of the State and for that purpose such constables shall have all the powers of constables of towns.

3242 (as amended by Public Acts of 1913, chapter 198). *Places for dumping mud, etc., to be designated.*—Before any person shall engage in removing mud or refuse material by boat from any harbor wherein or south of which oyster grounds are located and designated, he shall notify the [shellfish] commissioners by a written or printed notice delivered to said commissioners at their office in New Haven, stating the time when such work will be commenced and the name of the boat or boats to be employed. Within a reasonable time after the receipt of said notice said commissioners shall designate and buoy out places off the respective towns where such deposits shall be made. No person shall deposit mud or other material except in places so designated and buoyed out, nor within a radius of 5 miles from Southwest Ledge Lighthouse, nor in any of the waters opposite the town of Branford, nor unless an agreement in writing, with security to the satisfaction of the shellfish commissioners, has been entered into for the payment of inspectors provided in section 3244 of the General Statutes, unless such material is to be dumped on a private oyster bed as provided in section 3243 of the General Statutes. Every person violating any provision of this section shall be fined not more than \$500. This section shall not apply to the construction of breakwaters, docks, or any work authorized by the United States Government.

3243. *Notice to shellfish commissioners required before dumping on private oyster bed.*—Any person intending to dump material on any private oyster bed in State jurisdiction from bottom or side dumping scows shall first give reasonable notice thereof to the commissioners, designating the material and the location where it is proposed to dump the same, and said commissioners shall notify the adjoining owners that they may protest if material or place is not suitable. Every person who, having failed to give such notice, shall so dump material, shall be fined not more than \$50.

3244 (as amended by Public Acts of 1913, chapter 198). *Dumping inspectors.*—Said commissioners shall appoint one or more suitable persons who shall be known as dumping inspectors, whose duty it shall be to accompany every boat, when it is employed in towing or carrying mud or other material, except that used in making oyster beds, in any of the territory mentioned in section 3242 of the General Statutes, to see that such mud or other material is properly dumped, and to report to said commissioners any violation of law in respect to such dumping. No person in charge of or employed upon such boat shall interfere with such inspector in the discharge of his duty or refuse to permit him to enter and remain upon said boat while so employed. Said inspectors shall receive a sum not exceeding \$2.50 per day for such services, which shall be paid by the person or corporation by or on whose behalf such mud or material is so towed or carried. Said inspectors shall make sworn returns to said commissioners of all material taken out in boats on which they act as inspector and of the place where dumped, and no bill for services shall be paid until said sworn returns are on file in their office.

3245. *Putting mud in navigable waters.*—Every person who shall willfully deposit or assist in depositing any starfish or periwinkle in any of the navigable waters of this State or who shall dump mud or other material, except that used in making oyster beds, on any ground located and designated as oyster ground shall be fined not more than \$50 or imprisoned not more than six months.

4454. *Cemeteries not to be near ice ponds.*—No cemetery or place of sepulture shall be located within 600 feet of any ice pond already located, from which the inhabitants of any town, city, or borough are supplied with ice, unless such pond is upon a higher level than such cemetery or place of sepulture; nor shall any such ice pond be located within 600 feet of any cemetery or place of sepulture unless such ice pond is upon a higher level than such

cemetery or place of sepulture, or unless the superior court of the county where such cemetery or place of sepulture or ice pond is located shall, upon application, and such notice as it may deem proper, find that such cemetery or place of sepulture or such ice pond so proposed to be located is of public convenience and necessity, and will not be detrimental to the public health. If said court shall so find, before such cemetery or place of sepulture is located, it shall appoint a committee of three disinterested persons who, after examining the premises and hearing the parties interested, shall report to the court the damages to such ice pond resulting from such location. If said report is accepted, such cemetery or place of sepulture shall not be located until said damages are paid to the owner of such pond or deposited with the treasurer of the county for his use, which shall be done within 30 days after the acceptance of said report. If said application shall be denied, the owner of the ice pond shall recover costs of the applicant, to be taxed by said court, which may issue execution therefor. This section shall not affect grounds owned by existing cemetery associations, or land contiguous to such grounds which may hereafter be taken for the enlargement thereof.

4709. *Throwing furnace refuse from a vessel into waters.*—Every proprietor or charterer of any steamer or vessel, from which any furnace refuse shall be thrown into the waters of any harbor or river in this State, shall be fined for the first offense \$100, and for every subsequent offense \$200.

4773. *Depositing substances in certain waters.*—Every person who shall deposit any substance, except oyster shells, in New Haven Harbor or off its mouth within 2 miles of Southwest Ledge Lighthouse, or in Bridgeport Harbor or off its mouth within 300 feet outside of the outer bar, so-called, or in the waters adjacent to said harbor below Yellow and Old Mill Bridge, or in Stamford Harbor or off its mouth inside of a direct line drawn from Captains Island Light, off Greenwich, to the buoy on Old Cow Reef, off Shippon Point, shall be fined not less \$50 nor more than \$500, or imprisoned not more than six months or both; but this section shall not prevent the owners of land adjacent to said harbors from building wharves therein.

4775. *Depositing substances in certain waters.*—Every person who shall deposit or assist in depositing any mud or other substance, except oyster shells or other material necessary for making oyster beds, in Norwalk Harbor, or at any place off the town of Norwalk inside of a line running due east and west from a point due south a distance of 1 mile from Green Reef Government Buoy, or who shall deposit any substance in any of said waters during the night season, shall be fined not less than \$50 nor more than \$500, or imprisoned not more than six months or both. The town of Norwalk shall have cognizance of any complaint for violation of any provision of this section.

4787. *Putting substance in water that will be carried to the land of another.*—Every person who shall willfully deposit material in any watercourse where it will naturally be carried to the land of another to his injury, shall be guilty of committing a nuisance and shall pay to the party injured thereby double damages and costs, unless he shall, within a reasonable time after notice of the injury, remove such material from said land.

4791. *Letting filthy water run on land of another.*—Every person who shall place, collect, or suffer to remain upon the surface of land owned or occupied by him, or shall discharge or suffer to be discharged from his premises upon the land of another or upon any public land, any filthy water, garbage, or other filthy or noxious matter, whereby the owner or occupant of land in the vicinity thereof shall be injured or annoyed * * * shall be guilty of committing a nuisance, and shall be fined not more than \$50; the court before which such

conviction is had may order the defendant to remove such nuisance within three days, and upon his failure to do so it shall be removed by a constable of the town where such nuisance is maintained, and the court may tax the cost of the same against the defendant and issue execution therefor.

[ACTS OF 1900, CHAP. 137.]

SECTION 1. Pollution of water from which ice is taken prohibited.—No person shall, without having obtained permission or right, cut, damage, or pollute ice upon any river, brook, lake, pond, reservoir, or other waters from which ice is taken for domestic use or for use as an article of merchandise, after the owner of such waters, or the person, firm, or corporation having control of the same shall have posted notices as hereinafter provided, or shall throw or deposit any stick, stone, or other substance upon such ice whereby the cutting thereof is interfered with or the quality or value of such ice is affected, or shall put any filthy or impure substance into any waters from which such ice is taken: *Provided, however,* That this section shall not affect the rights of any manufacturing establishment now existing to use any waters in carrying on its business.

SEC. 2. Notices to be posted on lands adjacent to ponds.—Whenever any person, firm, or corporation has the right to take ice from any river, brook, lake, pond, reservoir, or other waters, and such person, firm, or corporation shall have posted printed notices in conspicuous places upon the land adjacent to such waters, substantially setting forth the provisions of the first and third sections of this act and also containing a statement that ice is to be taken from such waters for domestic use or for use as an article of merchandise, no person shall trespass upon the premises or ice which has been posted in accordance with the provisions of this section without having obtained permission from the owner or the person, firm, or corporation having control of such ice. Whenever the ownership or right to take all the ice on any body of water is not in one person, firm, or corporation, said notices shall describe the limits of ownership of such ice and posts shall be placed thereon to indicate the boundaries of such posted area.

SEC. 3. Ice brought from another state to be examined by State board of health.—Whenever ice shall be brought into this State to be sold for domestic use or for use as an article of merchandise, the person, firm, or corporation receiving and offering the same for sale shall notify the secretary of the State board of health of such shipment into the State and of the place where such ice was harvested, and said board of health, or any officer thereof, may take samples of such ice for examination and analysis and, if such ice shall be found unfit for domestic use, said board of health shall give the person, firm, or corporation receiving the same written notice of its findings, and such ice shall not be sold or distributed for domestic use.

SEC. 4. Penalty.—Violations of the foregoing provisions of this act shall be punishable by a fine of not more than \$100, or imprisonment of not more than 30 days, or by both such fine and imprisonment.

(Sec. 5 amends 2500 and the Revised Statutes. See above.)

SEC. 6. Compensation for abatement of nuisance.—Whenever any order is made by the superior court for the abatement of any nuisance to such water or ice, and said court shall find that compliance with said order will damage any person or corporation or deprive him or it of any substantial right, said court may assess just damages in favor of such person or corporation, to be paid by such municipality, person, or corporation as the court may decree.

[ACTS OF 1913, CHAP. 220.]

SECTION 1. Oversight of waters.—The State board of health shall have general oversight of all inland and tidal waters, including streams, lakes, and ponds used as sources of water supply, and all springs, streams, and water-courses tributary thereto.

[PUBLIC ACTS OF 1916, CHAP. 184, AS AMENDED BY PUBLIC ACTS OF 1917, CHAP. 280.]

SECTION 1. License required for persons engaged in business of bottling drinking water.—Any person engaged in business of bottling drinking water shall apply to the State board of health for a license, stating the location of the spring or other source from which water is to be taken and sold and the location of the premises where such business is to be conducted. Said board shall cause an examination of the water to be made, and if it finds the same free from contamination and the premises where such bottling is to be done in a sanitary condition, with the proper facilities for cleansing and sterilizing all bottles used, it may grant a license for one year to the person making such application, upon payment of a license fee of \$10. Such license may be renewed annually upon payment of a fee of \$5. Said board may revoke such license at any time, upon examination, when the water sold by such license is shown to be polluted or the premises where such water is bottled to be unsanitary.

SEC. 2. Licensing of manufacturers of soda water, ginger ale, etc.—Any person engaged in the business of manufacturing and selling bottled soda water, ginger ale or other beverages which are composed in part of raw or unboiled water shall, if such raw or unboiled water is not obtained from a public water supply which is under the supervision of the State board of health, comply with the provisions of section 1 of this act.

[ACTS OF 1915, CHAP. 284.]

SECTION 1. Definitions.—The term "waters of the State" shall include that portion of the Atlantic Ocean and its estuaries and Long Island Sound and its estuaries within the State, and all springs, ponds, streams, lakes, rivers, wells, and bodies of surface or underground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction. "Sewage" shall mean human and animal excretions and all domestic and such manufacturing wastes as may tend to the detriment of the public health.

SEC. 2 (as amended by Public Acts, 1917, chap. 220). Investigation of sewerage construction, etc., by State board of health.—The State board of health may investigate all points of sewage discharge and may examine all existing or proposed public sewerage systems and refuse disposal plants, and may compel their operation in a manner which shall protect the public health, or may order their alteration, extension, and replacement by other structures when necessary for the protection of the public health. After the passage of this act no public sewerage system or refuse disposal plant shall be built until the design of the same has been filed with the State board of health and approved by said board.

SEC. 3 (as amended by Public Acts, 1917, chap. 220). Prohibiting pollution of streams—exceptions.—No person, corporation, or municipality shall place or permit to be placed or discharge or permit to flow into any of the waters of the State any sewage, except as hereinafter provided. The provisions of this act shall not prevent the discharge of sewage from any private sewerage system or any public sewerage system owned and operated by a municipality,

provided such sewerage system was in operation and was discharging sewage into the waters of the State, or was in process of construction, on the date of the passage of this act, or to any sewerage system for which the plans shall have been submitted to and approved by the State board of health; nor shall the provisions of this act prevent the discharge into the waters of the State of sewage from any existing plant or sewerage system owned and maintained by any person or private corporation; but these exceptions shall not permit the continuance or increase of any pollution of the waters of the State which is prejudicial to the public health.

SEC. 4. Investigation of complaints.—Whenever complaint in writing shall be made to the State board of health by the mayor of a city, or any of the selectmen of a town, or the warden or any of the burgesses of a borough or any committeeman of a fire district, or the local health officer of a city or town, of an existing or threatened pollution of any of the waters of the State, the State board of health shall investigate such complaint, and whenever said board shall have reason to believe that any of the waters of the State are being polluted in a manner prejudicial to the public health, it may, upon its own motion, investigate such pollution. If said board shall find that any of the waters of the State are being polluted in a manner prejudicial to the public health, it may petition the superior court for such order as may be necessary to prevent the continuance of such pollution.

SEC. 5. Penalty.—Any person, or the directors of any private corporation, or the trustees of any institution, who shall discharge sewage, or permit the same to flow into the waters of the State contrary to the provisions of this act, shall be fined not more than \$500 for each offense, or imprisoned not more than six months, or both.

SEC. 6. Appeal from order of State board of health.—Any person, corporation, or municipality aggrieved by any order of said board may appeal to the superior court for the county wherein the pollution occurs, or wherein the sewerage system or refuse disposal plant is located. Such appeal shall be by a petition in writing and shall be taken within 30 days from the date on which the order appealed from is mailed or served. A copy of such petition shall be served on the secretary of the State board of health at least 12 days before the return day. Said court may hear such appeal and determine all questions thereon, either by itself or a committee, in the same manner as upon complaints for equitable relief, and make such order as may be equitable. Such appeal shall be a supersedeas of the order appealed from until final action of the court thereon.

SEC. 7. Procedure when orders are not carried out.—If any person, corporation, or municipality shall fail to comply with any order issued under the provisions of this act, the State board of health shall bring a complaint against such person, corporation, or municipality to the superior court for Hartford County; and said court may enforce such order in any appropriate manner.

SEC. 8. No vested right to discharge sewage.—Nothing contained in this act shall be construed as recognizing a vested right in any person, corporation, or municipality to discharge sewage into the waters of the State, or as legalizing such disposal of sewage.

SEC. 9. Information to be supplied by State board of health.—The State board of health, on request of any person, corporation, or municipality, shall furnish such person, corporation, or municipality such information and assistance as may be reasonably necessary in ascertaining or installing the most practicable sewerage system or refuse disposal plant.

[ACTS OF 1915, CHAP. 306.]

SECTION 1. *State board of health to have supervision.*—The State board of health shall have supervision over all matters concerning the purity of any source of water or ice supply used by any municipality, public institution, or water or ice company for obtaining water or ice. The term "source of water or ice supply" shall include all springs, streams, watercourses, brooks, rivers, lakes, ponds, wells, or underground waters from which water or ice is taken, and all springs, streams, watercourses, brooks, rivers, lakes, ponds, wells, or underground waters tributary thereto, and all lands drained by such springs, streams, watercourses, brooks, rivers, lakes, ponds, wells, or underground waters.

SEC. 2. *Persons supplying water to submit information.*—Every person, firm, or corporation supplying water to the public at the time of the passage of this act shall, on request, furnish the State board of health with all reasonable information regarding its waterworks and the source from which its supply of water is derived. No system of water supply owned or used by such municipal or private corporation or individual shall hereafter be constructed until the plans therefor have been submitted to and approved by said board.

SEC. 3. *State board of health to investigate sources.*—The State board of health may, and, upon complaint, shall, investigate any source of water or ice supply from which water or ice used by the public is obtained, and if it finds that such source of water or ice supply is contaminated or rendered impure, it shall notify any person or corporation causing such contamination of its findings, and after hearing, shall make such orders as may be necessary to prevent the contamination thereof.

SEC. 4. *State board of health may employ agents, engineers, etc.*—The State board of health may employ agents, engineers, and assistants to carry out the provisions of this act at an expense not exceeding such sums as may be approved by the State board of control.

SEC. 5. *Appeal from orders of State board of health.*—Any person or corporation aggrieved by any order of the State board of health, made under the provisions of this act, may appeal within 30 days to the superior court for the county in which the source of the water or ice supply is located. If such source is located in more than one county the appeal shall be taken to the superior court for that county containing the part of such source nearest the mouth of the stream or river forming the main portion of the source of supply. Such appeal shall be by a petition in writing. An attested copy of such petition shall be served on the State board of health at least 12 days before the return day of such petition, and the appellant shall give notice to all parties in interest by publication in a newspaper or as may be ordered by the court to which such appeal may be brought or by any judge of such court when such court is not in session. Such court may hear such appeal by itself or a committee, and shall proceed thereon in the same manner as upon complaints for equitable relief, and may make such order, including taxation of costs, as it may find proper.

SEC. 6. *Procedure in case of violation.*—Any order of the State board of health issued under the provisions of this act to any person or corporation shall specify the time within which such person or corporation shall comply with the terms thereof. If such person or corporation shall fail to comply with the terms of such order and no appeal shall be taken therefrom, the county health officer of such county shall bring a complaint against such person or corporation to the superior court of such county.

SEC. 7. *Penalty.*—Any person or corporation violating any provision of this act, or any order of the State board of health made under the provisions hereof, shall be fined not more than \$100.

[PUBLIC ACTS OF 1917, CHAP. 361.]

SECTION 1. Investigation of pollution of waters by State board of health.—The State board of health, acting with the persons to be appointed under the provisions of this act, is authorized to make such investigations and employ such expert assistance as may be necessary to enable it to carry out the provisions of section 9 of chapter 284 of the public acts of 1915 [see above] concerning pollution of the waters of this State.

SEC. 2. Commission to act with State board of health.—To assist the State board of health in carrying out the provisions of section 1 of this act, the governor shall, within 60 days after the passage of this act, appoint five persons to act with the State board of health in such investigations. At least two of such persons shall be men recognized as experienced in sanitation, and at least two of such persons shall be manufacturers. The persons appointed under the provisions of this act shall serve without compensation.

DELAWARE.

[REVISED CODE, 1915.]

738. Rules and regulations of the State board of health.—* * * The said board of health of the State of Delaware may make special or standing orders or regulations for the prevention of the spread of contagious or infectious diseases and for governing the receipt and conveyance of the remains of deceased persons, and such other sanitary matters as admit of and may best be controlled by a universal rule. * * *

764. Nuisance defined.—No person or persons shall cast, put, place, discharge in, or permit or suffer to be cast, put, placed, discharged in, or to escape into any running stream of water within the limits of this State, from which stream the inhabitants of any borough, town, or city, within the State are supplied wholly or in part with water for and as drink or beverage, any dye-stuffs, drugs, chemicals, or other substance or matter of any kind whatsoever, whereby and by means whereof the said water so supplied as and for a drink or beverage as aforesaid shall be made and become noxious to the health, or disagreeable to the senses of smell or taste.

765. Penalty.—Every person offending against the provisions of the preceding section shall be deemed guilty of committing a common nuisance, and upon conviction thereof by indictment in the Court of General Sessions shall be fined from \$1,000 to \$5,000, at the discretion of the court; and, in addition to the fine aforesaid, the court shall issue an order for the abatement of the nuisance within 20 days after the verdict of the jury upon the indictment aforesaid; and the sheriff of either of the counties of this State in which said conviction shall take place shall, under the order aforesaid, unless the said nuisance shall before the expiration of the time allowed for the abatement of the said nuisance have been abated, have full power to abate the same, and to this end shall enter on the premises from which the said nuisance proceeded and arrest, stop, and put an end to the business from the carrying on of which or in the process of which the said nuisance was created and carried on.

766. Offal, etc., declared to be nuisance.—No person shall put or place, or permit to be put, placed, or used, any privy, hogpen, or slaughterhouse over or so near that the excrement or offal therefrom shall escape or run into any stream of running water within the limits of this State from which the inhabitants of any town, borough, or city, within the limits aforesaid, are wholly or in part furnished with water as a drink or beverage; and anyone offending against the provisions of this section shall be deemed to be guilty of commit-

ting a common nuisance, and upon conviction thereof in the Court of General Sessions aforesaid shall be fined the sum of \$100, and the court shall order the nuisance to be abated immediately.

2513¹ (as amended by acts of 1915, chap. 203). *Use of drugs to kill fish or flow of certain deleterious substances into waters a misdemeanor.*—It shall be unlawful for any person willfully to put or place in the waters aforesaid [waters of Delaware River and Bay lying between the States of Delaware and New Jersey] * * * any drug * * * for the purpose of catching and taking, killing, or injuring the fish, or to allow any dyestuff, coal or gas tar, sawdust, tan bark, cocculus indicus (otherwise known as fish berries), lime refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive, or poisonous substance to be turned into or allow to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall forfeit and pay a fine of not more than \$5,000, or shall be imprisoned not more than one year, or both, in the discretion of the court. * * *

2567. *Use of deleterious substances to destroy fish, misdemeanors.*—It shall not be lawful for any person or persons to place in any of the ponds, lakes, rivers, or streams of this State, or in any of the waters belonging to the State, exclusive of the Delaware River and Bay, any lime, gas tar, cocculus indicus (otherwise known as fish berries), or any other deleterious substance. * * * and any person or persons offending against the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for a period not exceeding six months or by a fine not exceeding \$50, or by both such fine and imprisonment, at the discretion of the court before which such conviction shall be had. Of all penalties recovered under this section one-half shall go to the informer and the other half shall be paid to the board of game and fish commissioners.

3806. *Befouling of streams used for drinking-water supply.*—The Court of General Sessions shall have jurisdiction to abate nuisances as follows: The befouling of streams from which the inhabitants of any borough, town, or city are supplied wholly or in part with drinking water, as provided by * * * (secs. 765 and 766, above). * * *

DISTRICT OF COLUMBIA.

[REVISED CODE, 1911.]

803. *Poisoning of springs.*—Every person convicted of * * * willfully poisoning any well, spring or cistern of water shall be sentenced to imprisonment for not more than 15 years.

900. *Use of drugs, poisons, and so forth.*—It shall be unlawful for any person to catch or kill in the waters of the Potomac River or its tributaries within the District of Columbia any fish by means of * * * drugs or poisons.

901. *Deposits of deleterious matter.*—No person shall allow any tar, oil, ammoniacal liquor, or other waste products of any gas works or works engaged in using such products, or any waste product whatever of any mechanical, chemical, manufacturing, or refining establishment to flow into or be deposited in Rock Creek or the Potomac River or any of its tributaries within the District of Columbia or into any pipe or conduit leading to the same.

¹ The number of the section in the Revised Code of 1915 which related to the subject considered in this section was 2511.

1002. *Penalties.*—Any person who shall violate any of the provisions of the six next preceding sections shall be fined for each and every such offense not less than \$10 nor more than \$100, and in default of payment of fine shall be imprisoned for a period not exceeding six months; and any officer or other person securing such conviction shall be entitled to and receive one-half of any fine or fines imposed upon and paid by the party or parties adjudged guilty.

[27 STATUTES, p. 394.]

Sec. 2. *Rules and regulations.*—The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such reasonable and usual police regulations * * * as they may deem necessary for the protection of lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the District of Columbia.

[SIXTY-FOURTH CONGRESS, SESS. I, CHAP. 433.]

Sec. 9. *Drainage of sewage from Maryland through sewerage system of District.*—For the protection of streams flowing through United States Government parks and reservations in the District of Columbia from pollution by sewage discharged therein from sewerage systems of Maryland towns and villages bordering said District, the commissioners are authorized to enter into an agreement with the proper authorities of the State of Maryland for the drainage of such sewerage systems into and through the sewerage system of the District of Columbia; and the said commissioners are further authorized to permit connections of Maryland sewers with the District of Columbia sewerage system at or near the District line whenever, in their judgment, the sanitary conditions of streams flowing into and through such United States Government parks and reservations in the District of Columbia are such as to demand the elimination of such pollution: *Provided*, That all cost of construction of such sewers to and connection with the sewerage system of the District of Columbia shall be paid by the proper authorities of the State of Maryland, and that said State shall enter into such agreement with the commissioners and shall guarantee the protection of the District of Columbia sewerage system from unauthorized connections thereto, and shall reimburse the District of Columbia for the actual cost of pumping and handling such sewerage [sic] by annual payments for such service as determined by the commissioners in such agreement; all such sums collected therefor to be paid into the Treasury of the United States through the collector of taxes to the credit of the District of Columbia.

FLORIDA.

[COMPILED LAWS, 1914.]

1120a. *State board of health to regulate disposition of sewage in municipalities, etc.*—The State board of health shall have the power to make, adopt, promulgate, and enforce rules and regulations from time to time * * * to regulate the method of disposition of garbage or sewage and any other refuse matter in or near any incorporated city or town or unincorporated town or village of this State * * *.

1122. *Regulations of State board of health.*—It shall be the duty of the State board of health to formulate such rules and regulations for the preservation of the public health as in their judgment they may deem necessary, and to meet upon the first Monday of May of each year to formulate such additional rules and regulations for the preservation of public health as their experience may suggest * * *.

1155a. *Definition.*—That the term "underground waters of the State," when used in this act [secs. 1155a-1155e and 3003b], shall include all underground streams and springs and underground waters within the borders of the State of Florida, whether flowing in underground channels or passing through the pores of the rocks.

1155b. *Prohibiting discharge of sewage into underground waters except with permit.*—No municipal corporation, private corporation, person, or persons within the State shall, after the passing of this act, use any cavity, sink, driven or drilled well now in existence, or sink any new well within the corporate limits, or within 5 miles of the corporate limits, of any incorporated city or town, or within any unincorporated city, town, or village, or within 5 miles thereof, for the purpose of draining any surface water or discharging any sewerage [sic] into the underground waters of the State without first obtaining a written permit from the State board of health.

1155c. *Provisions for issuing permits.*—Every such permit for the discharge of sewerage [sic] or surface water shall be revocable or subject to modification or change by the State board of health on due notice after an investigation and hearing and an opportunity for all interests and persons interested therein to be heard thereon, said notice or notices being served on the person or persons owning, maintaining, or using the well, cavity, or sink, and by publication for two weeks in a newspaper published in the county in which said well, cavity, or sink is located. The length of time after the receipt of the notice within which it shall be discontinued may be stated in the permit. All such permits, before becoming operative, shall be filed in the office of the clerk of the circuit court for the county in which such permit has been granted.

1155d. *Definition.*—For the purpose of this act sewerage [sic] shall be defined as any substance that contains any of the waste products or excrementitious or other discharges from the bodies of human beings or animals.

1155e. *Discharge of sewage into underground waters to be discontinued on order of board of health.*—Every individual, municipal corporation, private corporation, or company shall discontinue the discharge within the corporate limits, or within 5 miles of the corporate limits of any incorporated city or town, or within any unincorporated city, town, or village, or within 5 miles thereof, of sewerage [sic] or surface drainage into any of the underground waters of the State within 10 days after having been so ordered by the State board of health.

1280a. *Persons engaged in mining must provide places for waste.*—Any person, firm, or corporation engaged in the business of mining any mineral or subterranean product in this State shall provide necessary places of deposit for the waste and debris of any mine or mines operated by such person, firm, or corporation.

1280b. *Escape of waste prohibited—Slightly discolored water an exception.*—Such person, firm, or corporation shall use due diligence to prevent the escape of all waste and debris from any mine or mines operated by such person, firm, or corporation into the streams and rivers of this State, but the escape of water only slightly discolored shall not be construed as the escape of waste and debris, nor shall the washing away of waste or debris due to excessive rains or floods, which are beyond the control of persons, firms, or corporations operating such mine or mines by the exercise of due diligence, be within the meaning of this act.

1280c. *Action on affidavits alleging negligent escape of waste.*—Upon the presentation to the board of county commissioners of any county in this State of an affidavit, signed by at least 10 citizens owning property in such county, which affidavit shall allege that some person or persons, firm or firms, cor-

poration or corporations conducting mining operations in this State, giving the name or names thereof, are not using due diligence to prevent the escape of waste or débris from any mine or mines operated by such person or persons, firm or firms, corporation or corporations into any stream or river of this State, and that such waste or débris is escaping into a stream or river in the county in which the affiants reside, but no prosecution for perjury shall be had on such affidavit, then it shall be the duty of the board of county commissioners to immediately institute suit in the name of such county to enjoin such person or persons, firm or firms, corporation or corporations from allowing such waste or débris to escape, and the joinder of any number of persons, firms, or corporations as defendants shall be no grounds of objections to the suit, and may join parties defendants not named in the affidavit if necessary.

1280r. *Where suit shall be commenced.*—Such cause of action shall be considered to arise in the county wherein the affidavit shall be presented to the board of county commissioners, and suit shall be commenced therein regardless of where the mine or mines from which the waste or débris is escaping are located.

1280s. *Procedure where regular attorney of county commissioners represents any mine operator.*—In the event the regular attorney of the board of county commissioners represents any person, firm, or corporation engaged in mining in this State, it shall be the duty of the State attorney of the circuit in which the county bringing the suit is situated to conduct the suit, and if the injunction shall be granted the county shall recover from the defendant or defendants such reasonable attorney's fee as shall be allowed by the court, which shall be paid to the attorney conducting the suit, in addition to the compensation regularly paid him.

3170c. *Punishment for misdemeanors where not otherwise provided.*—The punishment for commission of crimes other than felonies in this State, when not otherwise provided by statute, or when the penalty provided by such statute is ineffectual because of constitutional provisions, or because the same is otherwise illegal or void, shall be a fine not exceeding \$200 or imprisonment not exceeding 60 days, or both, at the discretion of the court.

3587. *Poisoning wells, etc.*—Whoever * * * willfully poisons any spring, well, or reservoir of water with such intent [to kill or injure another person] shall be punished by imprisonment in the State prison for life or for any term of years.

3603. *Defilement of springs, etc.*—Whoever willfully or maliciously defiles, corrupts, or makes impure any spring or other source of water or reservoir, or destroys or injures any pipe, conductor of water, or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by imprisonment not exceeding one year, or by fine not exceeding \$1,000.

3603a. *Prohibiting pollution public water supplies.*—Any person or persons, firm, company, corporation, or association in this State, or the managing agent of any person or persons, firm, company, corporation, or association in this State, or any duly elected, appointed, or lawfully created State officer of this State, or any duly elected, appointed, or lawfully created officer of any county, city, town, municipality, or municipal government in this State, who shall deposit, or who shall permit or allow any person or persons in their employ or under their control, management, or direction to deposit in any of the waters of the lakes, rivers, streams, and ditches in this State, any rubbish, filth, or poisonous or deleterious substance or substances liable to affect the health of persons, fish, or live stock, or place or deposit any such deleterious substance or substances in any place where the same may be washed or infiltrated into any of the waters herein named, shall be deemed guilty of a misdemeanor, and upon

conviction thereof in any court of competent jurisdiction shall be fined in a sum not more than \$500; *Provided further*, That the carrying into effect of the provisions of this act shall be under the supervision of the State board of health.

3608b. *Pollution of underground waters.*—Any municipal corporation, private corporation, person, or persons that shall discharge sewerage [sic] or surface drainage, or permit the same to flow into the underground waters of the State contrary to the provisions of this act [secs. 1155a-1155e] shall be deemed guilty of a misdemeanor, and shall upon conviction be punished by a fine of \$25 for each offense, and the doing of the prohibited act for each day shall constitute a separate offense, or by imprisonment not exceeding one month, or both, at the discretion of the court.

3622. *Penalty for violation of regulations of board of health.*—Whoever violates, disobeys, omits, neglects, or refuses to comply with * * * any of the rules and regulations which may be duly promulgated by said State health officer or said State board of health shall be punished by imprisonment not exceeding six months, or by fine not exceeding \$1,000.

3622a. *Penalty.*—Any person who shall violate, disobey, refuse, omit, or neglect to comply with any rule of said State board of health made by it in pursuance of this act [sec. 1155a] shall be guilty of a misdemeanor, and upon conviction thereof shall be punished in the manner provided by law for violation of the rules of said board.

3765a. *Use of lime or poisonous minerals to catch fish.*—On and after the passage and approval of this act [secs. 1155a-1155e] by the governor it shall be unlawful for any person or persons to use or place any lime or poisonous minerals in any of the fresh-water streams, rivers, lakes, or ponds in the State of Florida for the purpose of killing any of the fishes in said waters, and whoever by the use of any lime or poisonous minerals kills any fishes in said waters shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in a sum of not more than \$100 or less than \$10, or by imprisonment in the county jail not more than three months, or by both fine and imprisonment, at the discretion of the court.

GEORGIA.

[ANNOTATED CODE, 1914.]

855a. *Preventing pollution of water supplies.*—The council * * * shall have power * * * to erect or authorize or prohibit the erection of * * * waterworks in the town; to prevent injury to or pollution of the same, or to the water or healthfulness of the town * * *.

1662. *Investigation of water supplies.*— * * * If [the State board of health] shall respond promptly when called upon by the State or local government and the municipal and township boards of health to investigate and report upon the water supply, sewerage, disposal of excreta * * * of any place or public buildings. * * *

3629. *Owner of running water.*—Running water, while on land, belongs to the owner of it, but he has no power to divert it from the usual channel, nor can he so use or adulterate it as to interfere with the enjoyment of it by the next owner.

3630. *Streams boundary lines.*—The beds of streams not navigable belong to the owner of the adjacent land; if the stream of water is the dividing line, each owner is entitled to the thread or center of the main current; if the current change gradually, the line follows the current; if from any cause it takes

¹ Exclusive of Penal Code, for which see p. 190.

a new channel, the original line, if capable of identification, remains the boundary. Gradual accretions of land on either side accrue to the owner.

3631. *Navigable streams.*—A navigable stream is one capable of bearing upon its bosom, either for the whole or a part of the year, boats loaded with freight in regular course of trade. The mere rafting of timber or transporting wood in small boats does not make a stream navigable.

3632. *Owner of adjacent lands.*—The rights of the owner of lands adjacent to navigable streams extend to low-water mark in the bed of the stream.

3633. *Power of owner of streams.*—The owner of a stream not navigable is entitled to the same exclusive possession thereof as he has of any other part of his land; and the legislature has no power to compel or interfere with him in his lawful use, for the benefit of those above or below him on the stream, except to restrain nuisances.

3635. *Boundaries of lands on tidewaters.*—The title to the beds of all tidewaters in this State, where the tide regularly ebbs and flows, and which are not navigable under the next succeeding section, shall vest in the present owner of the adjacent land for all purposes, including, among others, the exclusive right to oysters, clams, and other shellfish therein or thereon. If the water is the dividing line, each owner's boundary shall extend to the main thread or channel of the water. If the main thread, or center, or channel of the water changes gradually, the line follows the same, according to the change. If for any cause it takes a new channel, the original line, if capable of identification, remains the boundary. Gradual accretions of land on either side accrue to the owner.

3636. *Navigable tidewater defined.*—A navigable tidewater is any tidewater, the sea or any inlet thereof, or other bed of water where the tide regularly ebbs and flows, which is in fact used for the purposes of navigation or is capable of bearing upon its bosom at mean low tide boats loaded with freight in the regular course of trade. The mere rafting of timber thereon or the passage of small boats thereover, whether for the transportation of persons or freight, shall not be deemed navigation within the meaning of this and the preceding section and does not make tidewater navigable.

4475. *Watercourses—Rights of owner.*—The owner of land is entitled to the free and exclusive enjoyment of all watercourses, not navigable, flowing over his land and * * * the adulterating thereof so as to interfere with its [the stream's] value to him is a trespass upon his property.

4476. *Underground streams.*—The course of a stream of water underground, and its exact condition before its first use, are so difficult of ascertainment that trespass can not be brought for any supposed interference with the rights of a proprietor.

[PENAL CODE, 1914.]

230a. *Prohibiting floating of sawdust into streams.*—It shall be unlawful to float sawdust into any of the streams of this State.

230b. *Penalty.*—Any person or persons or corporations violating the provisions of section 230a shall be punished as for a misdemeanor.

230c. *Act must have approval of grand jurists.*—This article [secs. 230a-230c] shall not go into effect in any county until it has been recommended by two grand jurors of the county.

434. *Carcasses of animals not to be placed in streams.*—If any person shall place the carcass of a horse, cow, sheep, goat, dog, or other animal in any stream * * * he shall be guilty of a misdemeanor.

611. *Poisoning fish.*—Any person who shall directly by himself or by aiding or abetting others put walnut hulls, walnut leaves, devil shoestring, or any poisonous substances whatever of any kind in any waters, either running streams or standing waters, such as lakes, ponds, or eddy places in any river or creek within the limits of this State, which will be likely to drive away or poison the fish therein by contaminating said waters, shall be guilty of a misdemeanor.

774. *Prohibiting poisoning of water to poison fish.*—Any person who shall poison any lake, river, stream, or pond, with a view of poisoning fish therein, shall be guilty of a misdemeanor.

775. *Penalty for poisoning water supplies.*—If any person shall willfully and wantonly poison or procure another to poison any spring, fountain, well, or reservoir of water, he shall be guilty of a felony, and on conviction therefor shall be imprisoned in the penitentiary for a term of not less than 2 nor more than 20 years.

HAWAII.

[REVISED LAWS, 1915.]

918. *Regulations of board of health.*—The board of health, with the approval of the governor, may make such regulations respecting nuisances, foul or noxious odors, gases or vapors, water in which mosquito larvae breed, sources of filth, causes of sickness or disease, within the respective districts of the Territory, and on board of any vessel; as also respecting adulteration and false branding of food; location, air space, ventilation, sanitation, drainage, and sewage disposal of buildings, courts, areas, and alleys; privy vaults and cesspools; fish and fishing; interments and dead bodies, cemeteries and burying grounds; laundries, stables, bakeries, poi shops, abattoirs, fish, meat or vegetable stores or markets, hotels, lodging houses, tenements, or any place or building where noxious or noxious trades or manufactures are carried on, or intended to be carried on; milk; poisonous drugs; pig and duck ranches, as it shall deem necessary for the public health and safety.

975. *Committing nuisance in stream.*—Every person who shall * * * commit any nuisance in any stream * * * shall, on conviction, pay a fine not exceeding \$3 or be imprisoned at hard labor for any term not exceeding 30 days.

4138. *Certificate required before water is furnished for potable purposes.*—No water shall be furnished for potable purposes in the Territory by any person, firm, corporation, or organization of any kind, county, municipal, or territorial department, whether for pay or without pay, except after a certificate first obtained of the territorial board of health setting forth that said board has examined the potability of the water intended to be furnished, the source of its supply, the system of its distribution, and that the water, source, and system of distribution are reasonably free from contamination and pollution, and that the water at the time is, in the opinion of the board, suitable for potable purposes without danger to public health.

4139. *Corporations, etc., must discontinue furnishing water on order of board of health.*—No person, firm, corporation, or organization of any kind, county, municipal, or territorial department shall continue to furnish water for potable purposes after written notice from the territorial board of health that the water, the source of supply, or system of distribution is not free from contamination or pollution, and that the water is, in the opinion of the board, unsuitable for potable purposes and dangerous to public health.

4140. *Penalty.*—Any person, firm, corporation, or organization of any kind who shall furnish or continue to furnish water for potable purposes contrary

to the provisions of this chapter shall, upon conviction, be punished by a fine of not more than \$100.

[PRIVY VAULTS AND CESSPOOLS. Res. Bd. of H., FEB. 11, 1915.]

SEC. 13. No privy vault, sink, or cesspool shall hereafter be located or constructed within 50 feet of any stream, lake, pond, well, or spring of water, nor within 2 feet of the line of any lot, nor placed in such a position that it is not easily accessible for emptying and cleaning. No privy vault shall extend farther beneath the privy covering it than to meet a perpendicular line drawn from the front edge of the seats in said privy. All privies shall be made fly proof.

The word "cesspool" in this code shall be construed to mean and include all excavations for the reception of waste matter into which waste water flows. All cesspools shall be properly sealed.

The words "privy vault" in this code shall be construed to mean and include all excavations for the reception of waste matter into which no waste water flows.

SEC. 14. When deemed necessary by the board of health or its agents, the sides and bottom of any privy vault, sink, or cesspool shall be made either wholly or in part water-tight, so as to prevent any saturation of the ground about the said vault, sink, or cesspool, and shall be properly vented.

SEC. 15. A cesspool or other sanitary means of disposing of waste shall be completed before any building hereafter to be constructed shall be occupied. No structure or cover shall be put upon or over any privy vault, sink, or cesspool until it has been inspected by the proper agent of the board of health and approved as meeting the requirements of these regulations and of public health. * * *

[POLLUTION OF SHELLFISH. Res. Bd. of H., FEB. 11, 1915.]

SEC. 124. Where any river, stream, lake, pond, or other body of fresh or salt water is polluted by sewage or other deleterious matters the taking of fish, shellfish, or any other product of the water for the purpose of using or disposing of same for human consumption is hereby prohibited * * *.

IDAHO.

[REVISED CODES, 1908.]

1066. *Regulations of State board of health.*—Whenever the State board of health shall have cause to believe that there is any danger of cholera, small-pox, or other contagious or infectious disease invading this State or country it shall be the duty of said board to * * * adopt and enforce such rules and regulations as may be necessary to prevent the introduction of such infectious or contagious disease within this State, and any person or persons or corporations refusing or neglecting to obey such rules and regulations shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$50 nor more than \$300, or imprisoned in the county jail for not less than 30 nor more than 90 days, or be punished by both such fine and imprisonment, in the discretion of the court, for every such offense.

6313. *Punishment for misdemeanor.*—Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$300, or by both.

6561. *Prohibiting poisoning water supplies.*— * * * every person who willfully poisons any spring, well, or reservoir of water is punishable by imprisonment in the State prison for a term not less than 1 nor more than 10 years.

7137. *Prohibiting pollution of water supplies.*—Every person * * * who shall empty or place or cause to be emptied or placed into any such canal, ditch, flume, or reservoir any rubbish, filth, or obstruction to the free flow of the water is guilty of a misdemeanor.

[SESSION LAWS OF 1909, P. 66.]

Sec. 6. *Trade wastes not to be emptied into watercourses.*—It shall be unlawful for the owner or owners of any sawmill, reduction works, smelters, refining or concentration works, or any of the employees thereof, or any other person or persons whomsoever, to deposit, throw, or in any way permit to pass into any stream or lake any sawdust, chemicals, or other substances that will or may tend to the destruction or driving away from such waters any fish or kill any fish by the use of poison or deleterious drugs: * * * *Provided further*, That nothing in this act contained shall prevent the owners of any quartz mill or reduction works in this State, now or hereafter to be located upon any natural stream or lake from operating said quartz mill or reduction works where the said owner or owners thereof shall build or cause to be built a suitable dam for settling purposes to be used in connection with said quartz mill or reduction works, for preventing any deleterious chemicals from flowing into such stream or lake.

Sec. 10. *Confiscation of poisons, etc.*— * * * All * * * lime, poisons, drugs, and other means and devices for unlawful taking or killing of any kind found in the possession of any person who may be detected in unlawfully taking fish from any of the waters of the State shall be seized by the officer making the arrest, and if it appears from the evidence before the magistrate trying the case that the * * * lime, poisons, drugs, and other means and devices for taking or killing fish are used or were about to be used or intended to be used for the unlawful taking of fish, the same are hereby confiscated and shall be ordered sold by the magistrate at public or private sale and the proceeds must be turned over to the fish and game warden to be applied to the fish and game fund. * * *

Sec. 17. *Penalty.*— * * * any person or persons, company or corporation, agent or employee violating any of the provisions of this act with respect to the use of * * * drugs or other means for the taking or destroying of any fish or game unlawfully shall be guilty of a misdemeanor and upon a conviction shall be fined in a sum not less than \$150 nor more than \$300 for each offense, or imprisonment in the county jail for a period of not less than 30 days nor more than 6 months, or by both such fine and imprisonment.

[SESSION LAWS OF 1913, CHAP. 173.]

Sec. 1. *Provisions for preventing pollution of ice.*—Ice offered or intended for public use or consumption shall be kept stored in clean places free from all filth, offal, refuse, and polluted waters and separate and removed from contact with animal or vegetable matter, and not in proximity to any cesspool, privy, vault, or sewer, nor in places where such ice may be subject to the contamination from, or the action of, acids, oils, noxious, offensive, or injurious gases, smoke, or vapors; and all ice kept or stored in violation of this section shall be deemed polluted ice and not fit for human consumption; and it shall be unlawful to sell, offer for sale, or store for sale such polluted ice.

SEC. 2. *Water to be supplied for domestic purposes must be kept unpolluted.*—That any corporation or person owning or maintaining any plant or system for the supply to the inhabitants of this State, or any part thereof, of water for domestic purposes shall keep the same clean and free from all impurities, accumulation of sediment, offal, refuse, dead animals, and all other foreign substances which tend to injure the health of the consumers of such water. Any person or corporation failing or neglecting to comply with any of the provisions of this act shall be guilty of a misdemeanor.

[DISPOSAL OF DEAD ANIMALS. REG. BD. OF H., MAY 13, 1914.]

RULE XXXI. No carcass of any dead animal shall be left unburied in the State of Idaho, nor shall it be thrown into any stream, lake, pond, well, or other body of water therein. Any such carcass shall be buried by the owner so that it will be covered by at least 3 feet of earth. Burial shall be made within 24 hours after death (and in all cases of death from a communicable disease the body shall be thoroughly enveloped in quicklime). At all municipal dumping grounds where carcasses are disposed of, provision must be made for their immediate burial. In lieu of the foregoing, the dead bodies of animals may be burned.

ILLINOIS.

[CRIMINAL CODE.]

188a (added by Laws of 1917, p. 351). *Penalty for damaging water supplies of troops.*—Any person who shall interfere with, damage, or injure any source of supply for water * * * for troops in the employment of the State or of the United States shall be punished by a fine of not less than \$100 nor more than \$5,000 and imprisonment in the penitentiary not less than one year nor more than 20 years.

[REVISED STATUTES, 1915-1916, CHAP. 10.]

47. *Appointment of Rivers and Lakes Commission.*—The governor of the State of Illinois, by and with the advice and consent of the Senate, shall appoint a rivers and lakes commission in and for the State of Illinois, whose powers and duties shall be as specified herein; and the governor shall, at the time of the appointment of said commission, as herein provided, designate one member thereof, who shall be the chairman of said commission, and shall thereafter name the successor of the said chairman as the vacancy occurs.

48. *Membership of commission.*—The members of said rivers and lakes commission shall consist of three members, not more than two of whom shall be of the same political party. This commission shall consist of one civil engineer of recognized standing in his profession, one lawyer of active practice and of large experience in his profession, and one person who shall be neither a lawyer nor a civil engineer, who is intimately acquainted with the rivers and lakes of Illinois.

49. *Terms of office.*—One of said members shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, and as the terms of the respective members expire their successors shall be appointed for periods of three years each, and shall serve for such time, unless sooner removed by the governor of this State for good cause, which may satisfy him that it is not desirable that said member shall no [sic] longer continue to serve upon said commission.

51. *Jurisdiction.*—Said rivers and lakes commission shall, upon behalf of the State of Illinois, have jurisdiction and supervision over all of the rivers and

lakes of the State of Illinois wherein the State of Illinois or the people of the State of Illinois have any rights or interests. * * *

53. *Encroachments.*—It shall be the duty of said commission to have a general supervision of every body of water within the State of Illinois wherein the State or the people of the State have any rights or interests, whether the same be lakes or rivers, and at all times to exercise a vigilant care to see that none of said bodies of water are encroached upon or wrongfully seized or used by any private interest in any way except as may be provided by law, and then only after permission shall be given by said commission, and from time to time for that purpose to make accurate surveys of the shores of said lakes and rivers and to jealously guard the same in order that the true and natural conditions thereof may not be wrongfully and improperly changed to the detriment and injury of the State of Illinois.

The rivers and lakes commission of Illinois shall have power and authority to inquire into encroachments upon, wrongful invasion, and private use of every stream, river, lake, or other body of water in which the State of Illinois has any right or interests. The commission shall have power to make and enforce such orders as will secure every stream, river, lake, or other body of water, in which the State of Illinois has any right or interest against encroachment, wrongful seizure, or private use.

54. *Complaints—hearings.*—It shall be the duty of the rivers and lakes commission of Illinois to receive from any citizen complaints as to any invasion of or encroachment upon any rights of the State of Illinois, or of any citizen of the State of Illinois, with reference to any of the public bodies of water of the State of Illinois, or as to any interference with the right or claim of any citizen to use or enjoy any public water of this State, and upon being requested so to do, the said rivers and lakes commission shall hold a public hearing for the purpose of taking evidence with reference to the subject matter of said complaint, and of hearing all persons who may appear upon behalf of, or in opposition to said petition, and at the conclusion of such hearing they shall enter an order defining the rights and interests of the parties, and prescribing their duties.

55. *Investigation of encroachments—actions.*—It shall be the duty of said commission to make a careful investigation of each and every body of water, both river and lake, in the State of Illinois, and to ascertain to what extent, if at all, the same have been encroached upon by private interests or individuals, and wherever they believe that the same have been so encroached upon, to commence appropriate action either to recover full compensation for such wrongful encroachment, or to recover the use of the same, or of any lands improperly or unlawfully made in connection with any public river or lake for the use of the people of the State of Illinois. The right and authority hereby given and created shall not be held to be exclusive, or to take from the attorney general or any other law officer of the State of Illinois, the right to commence suit or action.

60. *Pollution of streams.*—It shall be the duty of said rivers and lakes commission to see that all of the streams and lakes of the State of Illinois, wherein the State of Illinois, or any of its citizens, has any rights or interests, are not polluted or defiled by the deposit or addition of any injurious substances, and that the same are not affected injuriously by the discharging therein of any foul or injurious substances, so that fish or other aquatic life is destroyed. And if, upon investigation, the commission shall find that any of such streams and lakes are so polluted and defiled, or are affected injuriously

by the discharging therein of any foul or injurious substances so that fish or other aquatic life is destroyed, it shall be the duty of said commission to enter an order commanding the abatement of such nuisances within such time as may be fixed by the commission.

61. *Office a repository of data.*—It shall be the duty of said rivers and lakes commission to obtain and preserve in its office all obtainable data with reference to the rivers and lakes of Illinois, and to make such office a repository thereof, and all of such records and data shall be public and be available for the use of any person who may be interested therein; and certified copies thereof shall be received in court as evidence of the facts therein set forth. To secure the information authorized by this section to be obtained the commission or its duly authorized agent may cross any lands within the State and enter any building or factory where the power used is of hydraulic generation.

71. *Legal representative of commission.*—The attorney general of the State of Illinois, or any State's attorney of any county of the State of Illinois, or any attorney who may be authorized so to do by the said rivers and lakes commission, shall have the power to represent the said rivers and lakes commission, and in the name and by the authority of the State of Illinois, to invoke for the purposes specified in this act, all of the power of the State of Illinois to prevent the wrongs and injuries herein referred to, and for that purpose, such attorney general, State's attorney, or authorized attorney shall be deemed to be the proper representative of the State of Illinois, with full power and authority upon its behalf to prosecute all necessary suits or actions.

72. *Act not to impair rights of citizens as to use of public waters.*—Said rivers and lakes commission shall, for the purpose of protecting the rights and interests of the State of Illinois, or the citizens of the State of Illinois, have full and complete jurisdiction of every public body of water in the State of Illinois, subject only to the paramount authority of the Government of the United States with reference to the navigation of such stream or streams, and the laws of Illinois, but nothing in this act contained shall be construed or held to be any impairment whatsoever of the rights of the citizens of the State of Illinois to fully and in a proper manner enjoy the use of any and all of the public waters of the State of Illinois, and the creation of said commission shall be deemed to be for the purpose of protecting the rights of the people of the State in the full enjoyment of all of such bodies of water, and for the purpose of preventing unlawful and improper encroachment upon the same, or impairment of the rights of the people with reference thereto, and every proper use which the people may make of the public rivers, and streams and lakes of the State of Illinois shall be aided, assisted, encouraged, and protected by the rivers and lakes commission herein provided for.

And should said commission, or any member thereof, attempt to interfere with any valid right upon the part of the people of this State, any appropriate action shall lie against said rivers and lakes commission or any member thereof, to inquire into the legality and validity of such act.

73. *How act is to be construed.*—At all times this act shall be construed in a liberal manner for the purpose of preserving to the State of Illinois and the people of the State, fully and unimpaired, the rights which the State of Illinois and the people of the State of Illinois may have in any of the public waters of the State of Illinois, and to give them in connection therewith the fullest possible enjoyment thereof and to prevent to the fullest extent the slightest improper encroachment or invasion upon the rights of the State of Illinois or any of its citizens with reference thereto.

[REVISED STATUTES, 1915-16, CHAP. 24.]

169. *Cities and villages may prevent pollution of water supply.*—The city council or board of trustees shall have the power to provide for a supply of water by the boring and sinking of artesian wells, or by the construction and regulation of wells, pumps, cisterns, reservoirs, or water works, and to borrow money therefor, and to authorize any person or private corporation to construct and maintain the same at such rates as may be fixed by ordinance, and for a period not exceeding 30 years; also to prevent the unnecessary waste of water; to prevent the pollution of the water and injuries to such wells, pumps, cisterns, reservoirs, or water works.

170. *Jurisdiction of city or village.*—For the purpose of establishing or supplying water works, any city or village may go beyond its territorial limits and may take, hold, and acquire property by purchase or otherwise; and shall have power to take and condemn all necessary lands or property therefor in the manner provided for the taking or injuring private property for public uses; and the jurisdiction of the city or village to prevent or punish any pollution or injury to the stream or source of water or to such water works shall extend 5 miles beyond its corporate limits, or so far as such water works may extend.

243. *Ohio River towns have jurisdiction over their river frontage.*—Each of the several cities and incorporated towns of this State lying on the Ohio River and bounded thereby are hereby invested with jurisdiction over their river fronts and shall have jurisdiction over the waters of said river in all cases occurring on said river and opposite to each of said cities or incorporated towns, coextensive with the jurisdiction of the several counties in this State in which said cities or incorporated towns may lie: *Provided*, Nothing herein contained shall be construed so as to extend the jurisdiction of said cities or incorporated towns over any islands in said river included within the corporate limits of any county in the State of Kentucky.

[REVISED STATUTES, 1915-16, CHAP. 38.]

202. *Prohibiting pollution of water supplies.*—Whoever willfully and maliciously defiles, corrupts, or makes impure any spring or other source of water, or reservoir, or destroys or injures any pipe, conductor of water, or other property pertaining to an aqueduct, or aids and abets in any such trespass, shall be fined not exceeding \$1,000 or confined in the county jail not exceeding one year.

221. *Defining public nuisance.*—It is a public nuisance—

(2) To throw or deposit any offal or other offensive matter or the carcass of any dead animal in any watercourse, lake, pond, spring, well, or common sewer, street, or public highway.

(3) To corrupt or render unwholesome or impure the water of any spring, river, stream, pond, or lake, to the injury or prejudice of others.

(8) To erect, continue, or use any building or other place for the exercise of any trade, employment, or manufacture which, by occasioning noxious exhalations, offensive smells, or otherwise is offensive or dangerous to the health of individuals or of the public.

222. *Penalty.*—Whoever causes, erects, or continues any such nuisance shall for the first offense be fined not exceeding \$100, and for a subsequent offense shall be fined in a like amount and confined in the county jail not exceeding three months. Every such nuisance, when a conviction therefor is had in a court of record, may, by order of the court before which the conviction is had, be abated by the sheriff or other proper officer at the expense of the defend-

ant; and it shall be no defense to any proceeding under this section, that the nuisance is erected or continued by virtue or permission of any law of this State.

230. *Prohibiting poisoning water supplies.*—Whoever * * * willfully poisons any spring, well, or reservoir of water with such intent [intent to cause the death of any person] shall be imprisoned in the penitentiary not exceeding 20 years.

[REVISED STATUTES, 1915-16, CHAP. 42.]

244. *Creation of sanitary districts.*—Whenever any area of contiguous territory within the limits of a single county shall contain two or more incorporated cities, towns, or villages owning and operating, either or any of them, a system or systems of waterworks and procuring a supply of water from Lake Michigan, and shall be so situated that the construction and maintenance of a common plant for the purification and treatment of sewage and the maintenance of a common outlet for the drainage thereof will conduce to the preservation of the public health, the same may be incorporated as a sanitary district under this act * * *.

250. *Powers of board of trustees.*—The board of trustees of any sanitary district organized under this act shall have power to provide for the disposal of the sewage thereof and to save and preserve the water supplied to the inhabitants of such district from contamination and for that purpose may construct and maintain an inclosed conduit or conduits, main pipe or pipes, wholly or partially submerged, buried or otherwise, and by means of pumps or otherwise cause such sewage to flow or to be forced through such conduit or conduits, pipe or pipes, to and into any ditch or canal constructed and operated by any other sanitary district, after having first acquired the right so to do, or such board may provide for the drainage of such district by laying out, establishing, constructing, and maintaining one or more channels, drains, ditches, and outlets for carrying off and disposing of the drainage (including the sewage) of such district, together with such adjuncts and additions thereto as may be necessary or proper to cause such channels or outlets to accomplish the end for which they are designed, in a satisfactory manner, including pumps and pumping stations and the operation of the same. Such board may also treat and purify such sewage so that when the same shall flow into any lake, it will not injuriously contaminate the waters thereof, and may adopt any other feasible method to accomplish the object for which such sanitary district may be created, and may also provide means whereby the said sanitary district may reach and procure supplies of water for diluting and flushing purposes: *Provided, however,* That nothing herein contained shall be construed to empower or authorize such board of trustees to operate a system of water works for the purpose of furnishing or delivering water to any such municipality or to the inhabitants thereof. Nothing in this act contained shall authorize said trustees to flow the sewage of such district into Lake Michigan and any such plan for sewage disposal by any sanitary district organized hereunder is hereby prohibited.

263. *Prevention of pollution of sources of water supplies.*—The board of trustees of any such sanitary district shall have power and authority to prevent the pollution of any waters from which a water supply may be obtained by any city, town, or village within said district, and shall have the right and power to appoint and support a sufficient police force, the members of which may have and exercise police powers over the territory within such drainage district, and over the waters from which said water supply may be obtained, for a distance of 3 miles from the shore thereof, for the purpose of preventing the

pollution of said waters, and any interference with any of the property of such drainage district; but such police officers when acting within the limits of any such city, town, or village shall act in aid of the regular police force thereof, and shall then be subject to the direction of its chief of police, city or village marshals or other head thereof: *Provided*, That in so doing they shall not be prevented or hindered from executing the orders and authority of said board of trustees of such drainage district: *Provided further*, That before compelling a change in any method of disposal of sewage so as to prevent the said pollution of any water, the board of trustees of such district shall first provide some other method of sewage disposal.

[REVISED STATUTES, 1915-1916, CHAP. 93.]

52. *Casing off of fresh water from oil wells.*—It shall be the duty of any person, firm, or corporation sinking a well in any oil or gas bearing rock, or having sunk such well and maintaining the same, to case off and keep cased off all fresh water from such well.

52a. *Penalty.*—Any person * * * who * * * shall fail and neglect to properly case off fresh water from such well and keep the same cased off while said well is maintained, as provided in * * * [sec. 52 above], shall be liable to a penalty of \$100 for each and every violation thereof, and the further sum of \$100 for each 10 days during which such violation shall continue; and all such penalties shall be recoverable in a civil action brought in any court of competent jurisdiction in any county¹ in which said violation occurred, brought in the name of the State of Illinois on the relation of such county, and for the use and benefit of such county, and in all such cases; if there be recovery by the State, it shall recover in addition to such penalties a reasonable attorney's fee.

[REVISED STATUTES, 1915-1916, CHAP. 126a.]

2. *Rules and regulations of State board of health.*—* * * The board [State board of health] shall have authority to make such rules and regulations and such sanitary investigations as they may from time to time deem necessary for the preservation and improvement of the public health * * *. It shall be the duty of all local boards of health, health authorities, and officers, police officers, sheriffs, constables, and all other officers and employees of the State, or any county, village, city, or township thereof, to enforce the rules and regulations that may be adopted by the State board of health.

7. *Penalty for violation of such regulations.*—Any person who violates or refuses to obey any rule or regulation of said State board of health shall be liable to a fine not to exceed \$200 for each offense or imprisonment in the county jail not exceeding² six months, or both, in the discretion of the court * * *.

[REVISED STATUTES, 1915-1916, CHAP. 144.]

29. *Establishment of survey of waters of State.*—The trustees of the University of Illinois are hereby authorized and directed to establish a chemical and biological survey of the waters of the State in connection with said university.

30. *Water samples to be analyzed.*—It shall be the duty of the university to collect facts and data concerning the water supplies of the State, to collect

¹ Law reads "country."

² Law reads "exceed."

samples of waters from wells, streams, and other sources of supply, to subject these samples to such chemical and biological examination and analysis as shall serve to demonstrate their sanitary condition, and to determine standards of purity of drinking waters for the various sections of the State, to publish the results of these investigations in a series of reports to be issued annually, or oftener, to the end that the condition of the potable waters of the State may be better known and that the welfare of the people of the various communities of the State may thereby be conserved.

31. *Appropriation.*—For the installation and support of said survey there is appropriated the sum of \$3,000 per annum.

[TYPHOID FEVER (REG. BD. OF H., FEB. 16, 1915).]

5. *Precautions.*—* * * All discharges from bowels and bladder [of typhoid-fever patient] must be received in a vessel containing a liberal quantity of an approved disinfectant. * * *

The discharges should never be emptied on the ground or into a stream. After thorough disinfection they may be emptied in the sewerage system, or if no such system exists, as in rural districts, they should be buried at least 1 foot below the surface of the ground and not closer than 150 feet to any well or other source of water supply. * * *

[WATERWORKS AND SEWERAGE SYSTEMS (REG. BD. OF H., APR. 5, 1916).]

RULE No. 1. No municipality, district, corporation, company, institution, persons or person shall install or enter into contract for installing waterworks or sewers to serve more than 25 persons until complete plans and specifications fully describing such waterworks or sewers have been submitted to and received the written approval of the State board of health, and thereafter such plans and specifications must be substantially adhered to unless deviations are submitted to and receive the written approval of the State board of health.

RULE No. 2. No municipality, district, corporation, company, institution, persons or person shall make or enter into contract for making any additions to or changes or alterations in any existing waterworks serving more than 25 persons, when such additions, changes, or alterations involve the source of supply or means for collecting, storing, or treating the water, until complete plans and specifications fully describing proposed additions, changes, or alterations have been submitted to and received the written approval of the State board of health, and thereafter such plans and specifications must be substantially adhered to unless deviations are submitted to and receive the written approval of the State board of health.

RULE No. 3. No municipality, district, corporation, company, institution, persons or person shall make or enter into contract for making alterations or changes in or additions to any existing sewers or existing sewage treatment works serving more than 25 persons until complete plans and specifications fully describing such alterations, changes, or additions have been submitted to and received the written approval of the State board of health, and thereafter such plans and specifications must be substantially adhered to unless deviations are submitted to and receive the written approval of the State board of health.

RULE No. 4. Any municipality, district, corporation, company, institution, persons or person owning or operating water purification works or sewage treatment works shall submit to the State board of health monthly records showing clearly the character of effluents produced.

RULE No. 5. No municipality, district, corporation, company, institution, persons or person shall offer lots for sale in any subdivision unless within the boundaries of an area incorporated as a municipality or sanitary district until complete plans and specifications for sewerage, drainage, and water supply have been submitted to and received the written approval of the State board of health, and thereafter such plans and specifications shall be substantially adhered to unless deviations are submitted to and receive the written approval of the State board of health.

RULE No. 6. No natural ice shall be furnished or vended to the public for domestic purposes until the source of the ice supply has received the written approval of the State board of health, which approval is revocable upon evidence being presented or discovered of undue contamination entering the source.

INDIANA.

[ANNOTATED STATUTES, 1914.]

2253. *Poisoning water supplies.*—Whoever poisons any spring, fountain, well, cistern, or reservoir of water with intent to kill or injure any human being, on conviction, shall be imprisoned in the State prison not less than 3 years nor more than 14 years.

2441. *What constitutes public nuisance.*—* * * whoever causes or suffers any offal, filth, or noisome substance to be collected or to remain in any place to the damage, prejudice, or discomfort of others or the public, or whoever obstructs or impedes, without legal authority, the passage of a navigable river, harbor, or collection of waters, * * * shall, on conviction, be fined not less than \$10 nor more than \$500: *Provided*, That nothing in this section shall prevent the board of trustees of towns and the common councils of cities from enacting and enforcing such ordinances within their respective corporate limits as they may deem necessary to protect the public health and comfort.

2443. *Putting carcasses into streams.*—Whoever puts the carcass of any dead animal, or the offal from any slaughterhouse or butcher's establishment, packing house, or fish house, or any spoiled meat or spoiled fish, or any putrid animal substance, or the contents of any privy vault upon or into any river, pond, canal, lake, * * * shall, on conviction, be fined not less than \$1 nor more than \$100.

2462. *Prohibiting placing carcasses in water supplies.*—Whoever maliciously or mischievously puts any dead animal, carcass or part thereof, or any other putrid, nauseous, noisome, or offensive substance, into or in any manner befouls any well, cistern, spring, brook, canal, or stream of running water, or any reservoir of water-works, of which any use is or may be made for domestic purposes, shall, on conviction, be fined not less than \$5 nor more than \$100, to which may be added imprisonment in the county jail, not less than 10 days nor more than 60 days.

2546. *Prohibiting placing trade wastes in waters of State.*—It shall be unlawful for any person, firm, or corporation to cause, suffer, or permit any dye-stuff, acid, coal tar, oil, logwood, or any refuse matter or substance whatever to be thrown, run, or drained into any of the waters of this State in quantities sufficient to injure or destroy the lives of fish which may inhabit the same at or below the point where any such substances is [sic] discharged or permitted to flow into such waters. Whoever violates any of the provisions of this section shall, on conviction, be fined not less than \$50 nor more than \$1,000 for each offense, and each day's violation of the provisions of this section shall constitute a separate offense: *Provided*, That the provisions of this section

shall not abridge the rights of owners of gas or oil wells to drain the waters from such wells into the waters of the State, as now permitted by law.

7547. *Poisoning fish.*—Whoever throws or places in any stream, lake, or pond any lime or other deleterious substance, with the intent to injure fish, or any drug, medicated bait, cocculus indicus, or fish berries, with intent thereby to poison or catch fish, shall be fined not more than \$50 nor less than \$10.

7594. *Rules governing local health boards.*—The State board of health * * * shall have power * * * to pass rules governing the duties of all health boards and all health officers * * *.

7597. *State board of health to investigate pollution of water supplies.*—Whenever the common council, board of health of any city, or town, or the board of county commissioners of any county, or the trustee of any township, in this State, shall make complaint in writing to the State board of health, charging that any city, town, village, corporation, person, or firm named in said complaint is discharging, or is permitting to be discharged, any sewage or other wastes, or befouling or deleterious matter into any stream, watercourse, river, spring, lake, or pond, and is thereby materially injuring, for domestic use, the character of the water into which the same is discharged to the injury of public health or comfort, or is polluting the source of any public water supply, it shall be the duty of the State board of health to forthwith inquire into and investigate the conditions complained of, and if, upon such investigation, said board shall find the charges, or any of them, made in such complaint to be true, and that the conditions produced by the acts complained of are detrimental to public health or comfort, or to the comfort and health of persons residing in the vicinity of the water so befouled, it shall notify the person, municipality, corporation, or firm causing the pollution, of the board's finding, and, in the notice, shall fix a time for hearing. After such hearing, if the State board of health shall determine that the person, municipality, corporation, or firm should cease doing the acts complained of, it shall enter an order to that effect against the offender, and shall at the same time suggest such improvements or changes in the offender's works, plant, or property, if any said board knows of, as will render the noxious matter so being passed into the water innocuous and harmless, and shall require by its order the offender to adopt and apply the board's recommendations in that behalf before the offender shall again resume such use of the water, and such board shall in its order requiring the offender to discontinue the use of water, give to such offender a reasonable time to adopt, construct, and put in use the appliances so recommended by the board, and such order shall in each case indicate as a part thereof the time given to such offender: *Provided, however,* That in the event said board of health find that any offender is polluting the source of any water supply, the order of said board of health against such offender shall take effect immediately. The provisions of this section shall not apply to or be enforced against any city, town, village, or other municipality located on any stream, any part of which forms the boundary between the State of Indiana and another State, or any part of which flows from another State into the State of Indiana, so long as the unpurified sewage of cities, towns, villages, corporations, persons, or firms of such other States is permitted by law to be discharged into such streams upstream from such Indiana city, town, village, or other municipality.

7598. *State board of health may investigate water supplies believed to be polluted.*—Whenever the board of health or the health officer or 10 per cent of the electors of any city, town, or village in this State shall file with the State board of health a complaint in writing setting forth that it is believed that the public water supply of such city, town, or village is impure and dangerous to health, it shall be the duty of the State board of health forthwith to inquire

info and investigate the charges made in such complaint, and if the State board of health upon such investigation shall find and determine that such public water supply is impure and dangerous to health, or that it is not sufficiently purified because of improper construction of works or inefficient management or operation thereof, or of inadequacy of the size of any works designed to purify such public water supply, said State board of health shall notify the municipality, corporation, or other person operating such water supply of the board's findings and give an opportunity to the offender to be heard. After such hearing, if the State board shall determine that improvements or changes are necessary in the works or plant of the offender to render the public water supply pure and healthful, it shall notify such municipality, corporation, or other person operating said water supply or works to make such changes as the State board of health may recommend as respects the source of the water supply or works as will render the water pure and healthful to the satisfaction of the State board of health, which changes shall be made within a reasonable time to be named by the State board of health.

7590. *State board of health may order improvements in waterworks.*—Whenever the State board of health shall, on investigation voluntarily instituted by it or instituted after complaint filed, as in sections 1 and 2 of this act mentioned, find that any water-purification works or sewage-purification works, by reason of incompetent or inefficient supervision or operation, are not producing an effluent as pure as might reasonably be obtained from these works, and that by reason thereof any public water supply has become impure or dangerous to health, or that any stream, watercourse, river, spring, lake, or pond has become materially polluted, or has become a public nuisance, said board shall issue an order to the municipality, corporation, or other person having charge of or operating such purification works requiring that the effluent thereof shall be made as pure as might reasonably be expected from such plant, if properly operated, and as shall be satisfactory to said board; and in such order said board shall name a reasonable time within which the order shall be complied with. If such order shall not within such time be complied with, the State board of health shall order the offender to appoint, within 10 days, a competent person, approved by said State board of health, whose salary shall be paid by the municipality, corporation, or firm to whom the order is addressed, to take charge of and to superintend the operation of such purification plant or works, to the end that the effluent of such works shall be made as pure as might reasonably be expected from them, when properly operated, and as shall be satisfactory to said State board of health.

7590a. *Appeal from orders of State board of health.*—If any order of the State board of health, made in pursuance to the provisions of sections 1, 2, or 3 of this act, shall not be acceptable to the municipality, corporation, or person against whom such order is made, then within 20 days after the service of such order such dissatisfied municipality, corporation, or person may, by written request to said State board of health, require it to submit the matter in dispute to two sanitary engineers, one to be selected by the State board of health and the other by the party making the request, and in case the two so selected are unable to agree they shall choose a third sanitary engineer, and a finding and report joined in by the two first chosen or by any two of the three, if a third engineer shall have been chosen, shall become the finding of the board and the basis of an order to be made by the board, and both shall stand and be in force as a finding and order of the board until appealed from as in this act provided. The sanitary engineers above mentioned shall be reputable and experienced and not regularly employed by either the State board of health

or the complainant, if any, or by the party requesting the reference to engineers. Such engineers shall pass upon and report in writing concerning the necessity and reasonableness of the order of the State board of health, making their report to the State board of health, and shall therein affirm, modify, or reject the existing order of the State board of health. Such finding and report shall be prima facie evidence of the facts therein contained and shall be treated as such in any appeal from the State board of health to a circuit or superior court as hereinafter provided. The report of the engineers shall be made to the State board of health within 30 days after the appointment of the last one of such engineers appointed, unless the State board of health shall, at the request of the engineers, extend the time. The State board of health shall accept such report and shall enforce it as an order of the board, unless an appeal shall be taken therefrom to the circuit or superior court as hereinafter provided. The fees and expenses of the reference to engineers shall be paid equally by the State board of health and by the person or corporation requesting the reference.

7599b. *Secretary State board of health to record proceedings of board.*—It shall be the duty of the secretary of the State board of health to keep a complete record, in a proper record book of the board, of all the proceedings of said board had in pursuance of any provision of this act and of all evidence taken by the board in such proceeding, including as a part of such record the findings and report of the sanitary engineers to be made as provided for in section 4 of this act [7599a]. Such record shall be a public record open to the public.

7599c. *Appeal from decision of the board.*—Anyone aggrieved by any order of the State board of health, made in pursuance of the provisions of this act, may appeal from such order to the circuit or superior court of the county wherein such purification works are located and wherein such polluting substance is alleged to be passed into the water, by filing with the secretary of the State board of health, within 20 days after service of the order to be appealed from, a written request that an appeal be granted, accompanied by a bond with sufficient freehold surety, conditioned for the payment of all costs of said appeal and for any damages that may flow from the suspension of the operation of said order appealed from pending the appeal if the party appealing shall be defeated in such appeal. Such appeal shall be perfected by filing with the clerk of such circuit or superior court a complete transcript of the record of the State board of health in the matter in which the appeal is taken. It shall be the duty of the State board of health, as soon as such appeal is prayed and such bond is given and approved by it, to cause such transcript to be made and certified by the secretary of the State board of health, and upon payment of the cost of such transcript, at the rate of 15 cents for each legal cap typewritten page thereof, to deliver the same to the appellant. Said cause on appeal shall be tried as a civil cause, de novo, by the court without the intervention of a jury, and an appeal shall lie from the decision of such circuit or superior court therein as in other civil causes. In such appeal the appellant may contest the necessity and reasonableness of such order of the State board of health. The court, on final hearing, shall affirm or overrule the order of the State board of health appealed from. If it shall affirm such order, the appellant shall be liable for all costs of such appeal and damages suffered while it was pending growing out of the suspension of the operation of the order appealed from, or the court may adjudge an equitable division of the costs and disallow damages as to it may seem just. If the court overrules the order appealed from, the appellant shall be relieved from the payments of costs and damages.

7599d. *Penalties.*—If any municipality or officer thereof upon whom the duty to act is cast, or any other corporation or officer thereof on whom the duty to

act is cast, or any person, shall fail or refuse for a period of 10 days after the expiration of the time fixed by the State board of health for compliance with its order, or in case of appeal or appeals for a period of 10 days after final judgment affirming the board's order shall have been entered, to obey the same or in good faith to begin to make the changes and improvements in the works as ordered by the State board of health, such municipality, corporation, officer, or person so failing or refusing shall become liable for and forfeit to the State of Indiana the sum of \$500, to be recovered by the State in a civil action brought in said circuit or superior court by the State of Indiana on the relation of its attorney general, and such penalty when collected shall be paid into the State treasury for the use of the State.

7590e. *Disobedience of order of State board of health regarding disposition of sewage unlawful.*—It shall be unlawful for any municipality, after an order has been made against it by the State board of health requiring the construction of a filtration or sewage disposal plant in the form and manner hereinbefore set out in this act, to construct any sewer or drain designed to carry any substance or matter of a character to injuriously affect water for domestic use which shall, directly or indirectly, discharge into any stream, watercourse, river, spring, lake, or pond. It shall be unlawful for any person, firm, or corporation located within the corporate boundaries of any municipality against which any order has been made by the State board of health as hereinbefore provided requiring the construction of any filtration plant or sewage-disposal plant, or within 2 miles in any direction of the corporate boundaries of any such municipality, to construct any sewer or drain designed to carry any substance or matter of a character to injuriously affect water for domestic use which shall, directly or indirectly, discharge into any stream, watercourse, river, spring, lake, or pond, and all such sewers so constructed by any such firm, person, or corporation shall discharge into the sewer system of such municipality unless such person, firm, or corporation shall provide as a part of its said sewers or drains a plant for the filtration or purification thereof, and unless such filtration plant shall have been approved, in writing, by the State board of health: *Provided, however,* That nothing in any section of this act¹ shall give the State board of health power to direct any order against any person, firm, or corporation located within the corporate boundaries or within the police jurisdiction of any city for the pollution of any waters of the State of Indiana so long as such municipality shall also be using such waters as an outlet for its sewage system, unless it be charged and shown to such State board of health that such person, firm, or corporation is polluting the source of any public water supply, in which event the State board of health may proceed directly against such person, firm, or corporation regardless as to whether or not an order has theretofore been directed against the municipality within which such person, firm, or corporation is conducting its business. Nothing in this section or in this act is intended to enlarge the existing right of riparian owners or other persons to cast deleterious substances into streams and other waters sought to be protected by this statute, and this act shall not be construed to change the law, either common or statute, in this respect.

7590f. *Municipalities may, by assessment, provide means for sewage-purification works.*—All cities, towns, and other municipalities of this State are hereby given power to provide the means for paying the cost of constructing purification plants to purify the discharge of public sewers and drains now in existence or hereafter constructed by assessing the cost thereof against all of the several parcels of real estate situate within their corporate limits and to make each

¹ 7597-7599g.

assessment in a sum as great as but not greater than the value of the benefits received by each parcel, respectively, by reason of the construction of such plant. The statutes for the construction of public sewers and assessing the cost of the same against real estate in such municipalities, respectively, are hereby made applicable, as far as they can be, to the construction of such sewage-purification plants and the assessing of the cost thereof against real estate benefited thereby, and such cost may, at the option of the owner assessed, be paid in 10 equal annual installments, as in the case of assessments for such sewers.

7599g. *Penalties.*—Whoever violates any of the provisions of this act¹ or of any order, rule, or regulation of the State board of health made in pursuance of the provisions of this act, shall, upon conviction of such offense, be fined in a sum not greater than \$1,000, to which may be added imprisonment in the county jail for not more than six months; and it shall be the duty of the attorney general and of the prosecuting attorneys of this State to prosecute for such violations.

7599h. *Duty of local board of health when water is impure.*—Whenever the board of health of any city or town, the county health officer, or citizens equal to 5 per cent of the electors of any city or town in this State shall file with the State board of health a complaint in writing, setting forth that the public water supply coming from any stream or body of water is not filtered and is not of the purity required by any law or ordinance in force at the time of the passage of this act, or that it is believed that the public water supply of such city or town is impure and dangerous to health, it shall be the duty of the State board of health forthwith to inquire into and investigate the charges made in such complaint, and if the State board of health upon such investigation shall find and determine that such public water supply is impure and dangerous to health, or that it is not filtered or is not sufficiently purified because of improper construction of works or inefficient management or operation thereof, or of inadequacy of the size of any works designed to purify such public water supply, or is not of the purity required by the laws of the State or ordinances of the city or town in force at the time of passage of this act, said State board of health shall notify the municipality, corporation, or other person operating such water supply of the board's findings and give an opportunity to the offender to be heard. After such hearing, if the State board of health shall determine that improvements or changes are necessary in the works or plant of the offender to render the public water supply pure and healthful, it shall notify such municipality, corporation, or other person operating said water supply or works to make such changes as the State board of health may recommend with respect to the works or to the source of the water supply as will render the water pure and healthful to the satisfaction of the State board of health, which changes shall be made within a reasonable time, to be fixed by the State board of health.

7599i. *Record of proceedings.*—It shall be the duty of the State board of health to keep a complete record, in a proper record book of the board, of all of the proceedings of said board had in pursuance of any provision of this act and of all evidence taken by the board in such proceeding.

7599j. *Penalty for neglect.*—If any municipality, or officer thereof upon whom the duty to act is cast, or any other corporation or officer thereof on whom the duty to act is cast, or any person shall fail or refuse, for a period of 10 days after the expiration of the time fixed by the State board of health for compliance

¹ 7597-7599g.

with its order, or in case of appeal or appeals for a period of 10 days after final judgment affirming the board's order shall have been entered, to obey the same or in good faith to begin to make the changes and improvements in the works as ordered by the State board of health, such municipality, corporation, officer, or person so failing or refusing shall become liable for and forfeit to the State of Indiana the sum of \$500, to be recovered by the State in a civil action brought in said circuit or superior court by the State of Indiana on the relation of its attorney general, and such penalty, when collected, shall be paid into the State treasury for the use of the State, and each day's delay shall constitute a separate offense.

8655. *Powers of council to prevent pollution of streams.*—The common council of every city shall have power to enact ordinances for the following purposes:

Forty-eighth.—To keep rivers, streams, and other waterways open, and prevent the waters thereof from becoming polluted; jurisdiction for both of which purposes is given for 10 miles beyond the city limits. * * *

8661. *City to have exclusive control over its watercourses.*—Every city and town, except when otherwise provided by law, shall have exclusive power over the * * * watercourses, sewers, drains * * * within such city or town * * *.

IOWA.

[ANNOTATED CODE OF 1897. SUPPLEMENT OF 1913. SUPPLEMENTAL SUPPLEMENT OF 1915.]

696. *Prevention of nuisances.*—They [cities and towns] shall have power to prevent injury or annoyance from any dangerous, offensive, or unhealthy, to cause any nuisance to be abated, * * * to establish all needful regulations as to the management of packing and slaughterhouses, renderies, tallow chandleries, and soap factories, bone factories, tanneries, and manufactories of fertilizers and chemicals within the limits of such cities and towns; to regulate and restrain the deposit and removal of all offensive material and substances * * *. In addition to any right of abatement of any public or private nuisance they shall have the right to prohibit the same by ordinance and to punish by fine or imprisonment for the violation thereof. (Supplement, 1913, to Code of 1897.)

723. *Municipal jurisdiction over waterworks.*—For the purpose of maintaining and protecting such works or plants [waterworks, etc.] from injury, and protecting the water of such waterworks from pollution, the jurisdiction of such city or town shall extend over the territory occupied by such works and all reservoirs, mains, filters, streams, trenches, pipes, drains, poles, wires, burners, machinery, apparatus, and other requisites of said works or plants used in or necessary for the construction, maintenance, and operation of the same, and over the stream or source from which the water is taken for five miles above the point from which it is taken. (Code of 1897.)

1056-a49. *Preventing pollution of meandered streams in cities of 2,000 or more inhabitants.*—Every city * * * [of 2,000 or more inhabitants] shall have control of all the meandered streams within the boundaries thereof, and of the beds, banks, and waters of such streams. Said cities shall have power to prevent the placing or maintenance of nuisances and obstructions in such streams, or on or along the banks thereof, and to abate and remove such nuisances or obstructions therefrom, and to recover the expense thereof from the

* Compilation from which section is taken is in each case indicated at the end of the section.

person or persons causing, placing, or maintaining such nuisances therein or thereon * * *. (Supplement, 1913, to Code of 1897.)

2540-a. *Prohibiting the use of certain materials to kill fish.*—It shall be unlawful for anyone to place in the waters of the State any lime, ashes, or drug of any kind or other substance, * * * with the intent to kill or so to affect any fish that it may be taken, and anyone guilty of any of said acts shall be guilty of a misdemeanor and upon conviction thereof be fined not less than \$50 nor more than \$100, or imprisoned in the county jail not less than 15 nor more than 30 days. (Supplemental Supplement, 1915, to Code of 1897.)

2565. *Regulations of State board of health.*—The board [State board of health] shall have * * * authority to make such rules and regulations and sanitary investigations as it from time to time may find necessary for the preservation and improvement of the public health, which, when made, shall be enforced by local boards of health and peace officers of the State * * *. (Code of 1897.)

2572. *Enforcement of regulations.*—Local boards of health shall obey and enforce the rules and regulations of the State board; and peace and police officers within their respective jurisdictions, when called upon to do so by the local boards, shall execute the orders of such boards. If any local board of health shall refuse or neglect to enforce the rules and regulations of the State board of health, the State board of health may enforce its rules and regulations within the territorial jurisdiction of such local board, and for that purpose shall have and may exercise all the powers given by statute to local boards of health; and peace and police officers of the State, when called upon by the State board of health to enforce its rules and regulations, shall execute the orders of such board * * *. (Supplement, 1913, to Code of 1897.)

4773. *Poisoning springs, etc.*—If any person * * * willfully poison any spring, well, cistern, or reservoir of water he shall be imprisoned in the penitentiary not exceeding 10 years, and be fined not exceeding \$1,000. (Code of 1897.)

4945. *Prohibiting placing of human remains in water supplies.*—If any person * * * willfully and unnecessarily, * * * throw away or abandon any human body, or the remains thereof, * * * in any river, stream, pond, or other place, he shall be imprisoned in the penitentiary not more than two years or fined not exceeding \$2,500, or both. (Code of 1897.)

4970. *Prohibiting placing of carcasses in streams.*—If any person throw, or cause to be thrown, any dead animal, night soil, or garbage into any river, well, spring, cistern, reservoir, stream, or pond, or in or upon any land adjoining which is subject to overflow, he shall be imprisoned in the county jail not less than 10 nor more than 30 days, or be fined not less than \$5 nor more than \$100. (Supplement, 1913, to Code of 1897.)

5078. *Pollution of streams a nuisance.*—* * * the corrupting or rendering unwholesome or impure the water of any river, stream, or pond * * * are nuisances. (Code of 1897.)

5081. *Penalty—abatement.*—Whoever is convicted of erecting, causing, or continuing a public or common nuisance as provided in this chapter [sec. 5078], or at common law, when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be fined not exceeding \$1,000, or be imprisoned in the county jail not exceeding one year, and the court, with or without such fine, may order such nuisance abated and issue a warrant as hereinafter provided.¹ (Supplement, 1913, to Code of 1897.)

¹ Process is described in sections 5082-5 of the Code of 1897, which are not given in this compilation.

[DISPOSAL OF SEWAGE AND GARBAGE (REG. BD. OF H., JULY 21, 1911).]

RULE VI, SECTION 1. No privy vault, cesspool, or reservoir into which a privy, water-closet, sink, or stable is drained, except if be water-tight, shall be established or permitted in water-bearing strata or within 100 feet of any well, spring, or any other source of water used for drinking or culinary purposes.

SEC. 2. All privy vaults, reservoirs, or cesspools named in section 1 shall be cleaned and emptied of their contents at least once every year, before the 1st day of May, and shall be kept thoroughly deodorized and disinfected by adding to the contents thereof, at least once each month or oftener if necessary, calcium hypochlorite, as follows: Take the calcium hypochlorite in powder form and sprinkle over the contents until the odor is abated, stirring contents if necessary. All privy vaults within the limits of any city or town shall not be less than 5 feet deep, and shall be constructed of brick set in cement or of concrete construction or 2-inch tight lumber.

SEC. 3. No privy vault, water-closet, cesspool, sink, or stable drain shall open into any ditch, stream, or drain, except into the public sewers of the city or into disposal tanks equipped with aerated contact or trickling filters of ample area.

SEC. 4. (a) All sewer drains leading to outfalls or disposal plants shall be constructed of standard vitrified sewer pipe or standard cement sewer pipe with the joints properly set in cement in such a manner as to make them water-tight; and no sewer drain or outlet from any sewage-disposal plant, except as hereinafter provided, shall empty into any lake, pond, creek, stream, or open field.

(b) Septic tanks or other disposal tanks shall be made of water-tight concrete or masonry construction. The filters of disposal plants, except in isolated locations in nonwater-bearing strata, shall be installed in basins with water-tight bottom and side walls.

All disposal plants not discharging their effluent into an established sewer system shall be provided with aerated filter beds constructed of proper filtering materials and of sufficient capacity to render the effluent clear and nonputrescible at all seasons of the year; provided, that in the case of country residences and other isolated locations the effluent from septic tanks or cesspools or other types of sewage disposal need not be subjected to filtration if such effluent can be discharged in sufficient isolation to prevent the creation of a nuisance or a menace to health; and in any case the pollution of any source of domestic or public water supply must be avoided.

(c) Nonputrescibility of effluents may be determined by means of the following:

1. The oxygen absorbed test.
2. The organic sulphur method.
3. The methylene blue test.
4. The method recommended by the Royal Commission on Sewage Disposal or by any of the standard chemical methods.

(d) If the effluent from the filters shall be discharged into any watercourse, open drain, stream, or pond, or source of water supply, or upon any lowland where, in any manner, by drinking the effluent or water polluted by it or by contact with the same, either by man or beast, pathogenic germs may be

transmitted, such effluent shall be sterilized by calcium hypochlorite or other suitable and safe chemical means.

(c) The discharge of the effluent from septic disposal plants or any other type of disposal plant into abandoned wells or into creviced strata, reaching water-bearing strata, from which domestic or public water supply is drawn, is absolutely prohibited.

(f) The different methods of irrigation and intermittent filtration are not intended to be excluded by the above requirements, but are also permitted and recommended where the conditions and surroundings will allow such methods of sewage disposal to be safely employed without creating a nuisance or menace to health and without polluting any source of domestic or public water supply.

SEC. 5. (a) No offal, slops, or other wastes from any creamery, factory, shop, chicken house, slaughterhouse, tannery, hotel, boarding house, restaurant, laundry, meat market, or private residence, or any other source, shall be thrown or deposited, except in accordance with properly provided garbage disposal, upon any lot or land, or into any ravine or open ditch, stream or pond or upon any land adjoining which is subject to overflow.

(b) Any of the wastes above mentioned, not properly disposed of as garbage and common sewage, shall be disposed of by independent disposal plants, which latter provision shall particularly apply to creameries, slaughterhouses, factories, and shops.

SEC. 6. (a) All dead animals and all decomposed animal matter shall be deodorized and immediately removed to dump grounds provided by the city and there buried at least 3 feet under ground.

(b) The dump grounds so used must be so located and of such a character as not to affect or contaminate any domestic or public water supply, either by overflow or percolation.

SEC. 7. No slops, offal, garbage, manure, or any other refuse shall at any time be deposited in any of the streets or alleys, or upon any lot in the city, except it be deposited in a regulation garbage box, as provided for in section 8 of this rule. All property owners shall be held responsible for the sanitary condition of the alley abutting on their premises.

SEC. 8. Each and all property owners within a city shall provide a suitable garbage box for each of his premises; said garbage box shall be so constructed as to be not more than 3 feet wide, 3 feet high, and 5 feet long and shall be made of tight-matched lumber or galvanized iron and shall stand at least 9 inches from the ground and shall be fitted with an attached cover which shall be fly proof and shall be kept closed.

SEC. 9. All garbage boxes and their contents shall be kept thoroughly deodorized, and the contents of all such boxes shall be removed at least twice each week, and oftener if so ordered by the health officer.

SEC. 10. All cellars, caves, and outbuildings shall be cleansed and disinfected at least twice each year, and all cattle yards, chicken yards, barns, or stables, when in use, shall be cleaned each day, and at all times kept free from all offensive odors.

SEC. 11. No privy vault shall be allowed upon any premises where there is a possible connection to the city sewer.

SEC. 12. A violation of any provision or section of this rule shall be deemed to be the commitment of a nuisance and shall subject the violator to the full penalty provided by statute and the ordinances of any city in Iowa having like regulations.

SEC. 13. It shall be the duty of the city marshal and other sanitary police officers to enforce these regulations, as herein set forth, under the supervision of the health officer.

[GENERAL STATUTES, 1915.]

1107. *Health regulations by cities of first class.*—[The mayor and council of cities of the first class, i. e., cities with a population of more than 15,000, shall have power] to make regulations to secure the general health of the city; to prevent and remove nuisances; to regulate or prohibit the construction of privy vaults and cesspools and to regulate or suppress those already constructed; * * * to suppress hogpens; to regulate or suppress slaughter-houses and stockyards and prescribe and enforce regulations for cleaning and keeping the same in order * * *. (Sec. 1521 makes these provisions apply to the board of commissioners in cities of third class adopting commission form of government.)

1400. *City may enjoin nuisances.*—Any city may bring an action to enjoin and abate or prevent any nuisance that exists or is about to be created within the city or within 3 miles of its corporate limits.

1735. *Regulation of water supplies by cities of second class.*—The council [of cities of the second class, i. e., cities of more than 2,000 and not over 15,000 inhabitants] may establish, make, and regulate public wells, cisterns, aqueducts, and reservoirs, and provide for filling the same; and may establish, alter, change, straighten, divert, and otherwise improve the channels of watercourses, wall them, and cover them over * * *. (Sec. 1826 confers similar powers on boards of commissioners where commission form of government has been adopted.)

1737. *Council may remove nuisances, etc.*—The council [in cities of the second class] may * * * make regulations to secure the general health of the city and to prevent and remove nuisances and to provide the city and its inhabitants with water * * *.

1935. *Councils may regulate watercourses.*—The council [in cities of the third class] may establish, alter, and change the channels of watercourses and wall them and cover them over; and may establish, make, and regulate public wells, cisterns, aqueducts, and reservoirs of water, and provide for filling the same.

1937. *Council may enjoin nuisances, etc.*—The council [in cities of the third class] may * * * make regulations to secure the general health of the city and to prevent and remove nuisances and to provide the city with water.

3401. *Poisoning springs, etc.*—Every person who shall * * * willfully poison any spring, well, or reservoir of water shall, upon conviction, be punished by confinement and hard labor not less than 5 nor more than 20 years.

• 3008. *Deposition of dead hogs in water courses prohibited.*—Whoever shall throw or deposit a dead hog in any river, stream, creek, or ravine shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding \$100.

3090. *Dead animal into well, etc.*—If any person or persons shall put any dead animal's carcass, or part thereof, into any well, or into any spring, brook, or branch of running water, of which use is made for domestic purposes, every person so offending shall, on conviction thereof, be fined in any sum not less than \$2 nor more than \$100.

3702. *Carcass into river, creek, etc.*—If any person or persons shall put any part of the carcass of any dead animal or domestic fowl into any river, creek, pond, * * * or if the owner or owners thereof shall knowingly permit the same to remain in any of the aforesaid places, to the injury of the health or to the annoyance or damage of the citizens of this State or any of them, every

person so offending shall, on conviction thereof before any justice of the peace of the county, be fined in a sum not less than \$1 nor more than \$25; and every 24 hours during which said owner may permit the same to remain thereafter shall be deemed an additional offense against the provisions of this act.

4941. *Unlawful to catch fish except by rod and line and fishhook.*—It shall be unlawful for any person to catch, take, or attempt to catch or take from any lake, pond, river, creek, stream, or other waters within or bordering on this State any fish by any means or in any manner except by rod and line and fishhook * * *. (Provisos do not alter effect of section in making illegal use of drugs, explosives, etc., for the purpose of taking fish. A more specific prohibition (sec. 3872 of General Statutes of 1909) was repealed when above was adopted, acts of 1911, chapter 198.)

10122. *Regulations of State board of health.*—* * * [The State board of health] are further empowered to make and enforce any regulations to obstruct and prevent the introduction or spread of infectious or contagious diseases to or within the State * * *.

10182. *Nuisances.*—The State board of health and the local boards of health shall have power and authority to examine into all nuisances, sources of filth, and causes of sickness that may, in their opinion, be injurious to the health of the inhabitants within any county or municipality in this State; and whenever any such nuisance, source of filth, or cause of sickness shall be found to exist on any private property or upon any watercourse in this State, the State board of health or local boards of health shall have power and authority to order, in writing, the owner or occupant thereof, at his own expense, to remove the same within 24 hours, or within such reasonable time thereafter as such board may order; and if the owner or occupant shall neglect so to do, he shall on conviction be fined not less than \$10 nor more than \$100, and each day's continuance of such nuisance or source of filth or cause of sickness, after the owner or occupant thereof shall have been notified to remove same, shall be a separate offense.

10183. *County attorney to prosecute.*—It shall be the duty of the county attorney of each county to prosecute any person who shall violate the provisions of * * * (sections 10182 and 10183).

10184. *Defining "waters of the State."*—The term "waters of the State," wherever used in this act [secs. 10184-10194], shall include all streams and springs and all bodies of surface and of impounded ground water, whether natural or artificial, within the boundaries of the State.

* 10185. *Water companies to file plans with State board of health.*—Every municipal corporation, private corporation, company, and individual supplying or authorized to supply water to the public, within the State, shall, within 60 days after the passage of this act, file with the State board of health a certified copy of the plans and surveys of the waterworks, with a description of the source from which the supply of water is derived, and no additional source of supply shall thereafter be used without a written permit from the State board of health, as hereinafter provided.

10186. *Permit to supply water for domestic purposes.*—No person, company, corporation, institution, or municipality shall supply water for domestic purposes to the public within the State from or by means of any waterworks that shall have been constructed or extended, either in whole or in part, subsequent to the passage of this act, without a written permit from the State board of health for the supplying of such water, except that this provision shall not apply to the extension of water pipes for the distribution of water. The application for such shall be accompanied by a certified copy of the maps, plans, and specifications for the construction of such waterworks or extension

and of a description of the source from which it is proposed to derive the supply, and of the manner of storage, purification, or treatment proposed for the supply previous to its delivery to consumers, together with such other data and information as may be required by the State board of health; and no other or additional source of supply shall subsequently be used for any such waterworks, nor any change in the manner of storage, purification, or treatment of the supply be made, without an additional permit, to be obtained in a similar manner from the State board of health. Whenever application shall be made to the State board of health for a permit under the provisions of this section, it shall be the duty of the State board of health to examine the application without delay, and as soon as possible thereafter to issue the said permit if, in its judgment, the proposed supply appears to be not prejudicial to the public health, or to make an order stating the conditions under which the said permit will be granted. If the said person, company, corporation, institution, or municipality shall consider the terms of such order to be illegal or unjust or unreasonable, it may, within 30 days after the making of such order, appeal therefrom to the district court of the county in which the proposed waterworks, or extension thereof, is to be located; and the said court shall hear the said appeal without delay and shall render a decision approving, setting aside, or modifying the said order, or fixing the terms upon which said permit shall be granted, and stating the reasons therefor. The supplying of water for domestic purposes to the public within the State from or by means of any waterworks that shall have been constructed or extended, either in whole or in part, subsequent to the passage of this act, without a permit to do so obtained from the State board of health as hereinbefore provided, shall be deemed a misdemeanor and shall be punishable by a fine of not less than \$25 nor more than \$50 for each offense. The supplying of water in each day contrary to the provisions of this act shall be considered to constitute a separate offense. Whenever complaint shall be made to the State board of health by the mayor of any city of the State, or by a county health officer or by a local board of health, touching the sanitary quality of any water supplied to the public for domestic or drinking purposes within the county within which the said city or health officer or local board of health is located, it shall be the duty of the State board of health to investigate the character of the water supply concerning which the complaint is made. Also, whenever the State board of health shall have reason to believe that the sanitary quality of any water supplied to the public within the State for domestic or drinking purposes is such as to be prejudicial to the public health it may, upon its own motion, investigate the character of such water supply. Whenever an investigation of any water supply shall be undertaken, under either of the foregoing provisions, it shall be the duty of the person, company, corporation, institution, or municipality having in charge the water supply under investigation to furnish, on demand, to the State board of health such information relative to the source or sources from which the said supply of water is derived and to the manner of storage, purification, or treatment of the water before its delivery to consumers as may be necessary or desirable for the determination of its sanitary quality. And the State board of health is hereby given authority to make an order requiring such changes in the source or sources of the said water supply, or in the manner of storage, purification, or treatment of the said supply, before delivery to consumers, or in both, as may, in its judgment, be necessary to safeguard the public health. It shall be the duty of the person, company, corporation, institution, or municipality having in charge the water supply investigated, or the works for the development or distribution of the supply, to fully comply with the said order of the State

board of health. If any such person, company, corporation, institution, or municipality shall consider the requirements of the said order to be illegal or unjust or unreasonable it may, within 30 days after the making of the said order, appeal therefrom to the district court of the county in which the said waterworks are located, and the said court shall hear the case without delay and shall render a decision approving, setting aside, or modifying the said order, or fixing the terms upon which said permit shall be granted, and stating the reasons therefor.

10187. *Prohibiting flow of sewage into waters of the State.*—No person, company, corporation, institution, or municipality shall place or permit to be placed or discharge, or permit to flow into any of the waters of the State, any sewage, except as hereinafter provided. But this act shall not prevent the discharge of sewage from any public sewer system owned and maintained by a municipality or sewerage company, provided such sewer system was in operation and was discharging sewage into the waters of the State on the 20th day of March, 1907; but this exception shall not permit the discharge of sewage from any sewer system that shall have been extended subsequent to the aforesaid date, nor shall it permit the discharge of any sewage which, upon investigation by the State board of health, as hereinafter provided, shall be found to be polluting the waters of the State in a manner prejudicial to the health of the inhabitants thereof. For the purposes of this act, sewage is hereby defined as any substance that contains any of the waste products or excrementitious or other discharges from the bodies of human beings, or animals, or chemical or other wastes from domestic, manufacturing, or other forms of industry.

Whenever complaint shall be made to the State board of health by the mayor of any city of the State, or by a county health officer, or by a local board of health, of the pollution or of the polluted condition of any of the waters of the State situated within the county within which the said city or health officer or local board of health is located, it shall be the duty of the State board of health to make an investigation covering the pollution or the polluted condition concerning which complaint is made. Also, whenever the State board of health shall have reason to believe that any of the waters of the State are being polluted in a manner prejudicial to the health of any of the inhabitants of the State, it may upon its own motion investigate such pollution. Whenever an investigation shall be undertaken by the State board of health under either of the foregoing provisions it shall be the duty of any person, company, corporation, institution, or municipality concerned in such pollution to furnish on demand to the State board of health such information as may be required relative to the amount and character of the polluting material discharged into the said waters by such person, company, corporation, institution, or municipality. And if the State board of health shall find that any of the waters of the State have been or are being polluted in a manner prejudicial to the health of any of the inhabitants of the State, the State board of health shall have the authority to make an order requiring such pollution to cease within a reasonable time, or requiring such manner of treatment or of disposition of the sewage or other polluting material as may, in its judgment, be necessary to prevent the future pollution of such waters, or both. And it shall be the duty of the person, company, corporation, institution, or municipality to whom such order is directed to fully comply with the said order of the State board of health. If the person, company, corporation, institution, or municipality shall consider the requirements of the said order to be illegal or unjust or unreasonable, it may, within 30 days after the making of the said order, appeal therefrom to the district court of the county in which the

pollution or polluted condition occurs; and the said court shall hear the said case without delay and shall render a decision approving, setting aside, or modifying the said order, or fixing the terms upon which said permit shall be granted, and stating the reasons therefor.

10188. *Permits to discharge sewage—how granted.*—Upon application duly made to the State board of health by sewerage companies or by the public authorities having by law the charge of the sewer system of any municipality, the governor of the State, the attorney general, and the secretary of the State board of health shall consider the case of such a sewer system, otherwise prohibited by this act from discharging sewage into any of the waters of the State, and whenever it is their unanimous opinion that the general interests of the public health would be subserved thereby, the secretary of the State board of health may issue a permit for the discharge of sewage from any such sewer system into any of the waters of the State, and may stipulate in the permit the conditions on which such discharge may be permitted. Such permit, before being operative, shall be recorded in the office of the recorder of deeds for the county wherein the outlet of the said sewer system is located. Every such permit for the discharge of sewage from a sewer system shall be revocable, or subject to modification and change, by the State board of health, on due notice, after an investigation and hearing, and an opportunity for all interested therein to be heard thereon, being served on the sewage company or on the public authorities of the municipality owning, maintaining, or using the sewage system. The length of time after receipt of the notice within which the discharge of sewage shall be discontinued may be stated in the permit, but in no case shall it be less than one year or exceed two years, and if the length of time is not specified in the permit it shall be one year. On the expiration of the period of time prescribed, after the service of a notice of revocation, modification, or change from the State board of health, the right to discharge sewage into any of the waters of the State shall cease and terminate; and the prohibition of this act against such discharge shall be in full force, as though no permit had been granted; but a new permit may thereafter again be granted, as hereinbefore provided.

10190. *Penalty.*—The penalty for the discharge of sewage from any public sewer system into any of the waters of the State without a duly issued permit, in any case in which a permit is required in this act, shall be \$500 and a further penalty of \$50 per day for each day the offense is maintained. The penalty for the discharge of sewage from any public sewer system into any of the waters of the State without filing a report, in any case in which a report is required by this act to be filed, shall be \$50 per day for each day the offense is maintained.

10191. *Discharge of sewage may be ordered discontinued.*—All individuals, private corporations and companies that at the time of the passage of this act are discharging sewage into any of the waters of the State may continue to discharge such sewage unless, in the opinion of the State board of health, the discharge of such sewage may become injurious to the public health. If at any time the State board of health considers that the discharge of such sewage into any of the waters of the State may become injurious to the public health, it may order the discharge of such sewage discontinued.

10192. *Penalty.*—Any person, company, corporation, institution, or municipality who shall fail to furnish, on demand, to the State board of health such information as may be required by the said board under the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than \$50 and not more than \$500. Any person, com-

pany, corporation, institution, or municipality who shall fail to fully comply with the requirements of the State board of health herein authorized to be made shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than \$25 and not more than \$100 for each offense. The failure to comply with such requirements in each day in which such failure is made shall be considered to constitute a separate offense.

10194. *Election to vote on waterworks changes costing over \$1,000.*—Nothing in this act¹ shall permit the board of health to change the supply of water for any municipal water plant where the cost of such change would exceed \$1,000 without first submitting the same to the qualified electors at a general or special election.

[ANALYSES OF ICE WHEN SOLD FOR DOMESTIC PURPOSES (REG. BD. OF H., OCT. 4, 1915).]

1. Corporations or individuals selling artificial ice for domestic consumption shall submit to the water and sewage laboratory of the State board of health complete information concerning the source of water supply used for the manufacture of the ice and detailed description of the process involved.

2. A 50-pound cake of ice manufactured shall be sent to the water and sewage laboratory of the State board of health, Lawrence, Kans., each year for complete analysis. Results of these analyses shall be reported to the person whose name is signed to the information sheet and to the secretary of the State board of health.

3. Artificial ice shall contain less than 100 bacteria per cubic centimeter and no organisms of the bacillus coli group in 1 cubic centimeter. If the ice does not meet these requirements, it shall be sold for refrigeration purposes only and not for domestic consumption.

4. Corporations or individuals harvesting natural ice shall file full information with the water and sewage laboratory of the State board of health with regard to the source of the ice and the method of storage.

5. A 50-pound cake of the ice shall be shipped to the water and sewage laboratory of the State board of health during March or April each year for complete analysis.

6. Natural ice properly stored shall contain less than 100 bacteria per cubic centimeter and no organisms of the bacillus coli group in 1 cubic centimeter. If the ice does not meet these requirements, it shall be sold for refrigeration purposes only and not for domestic consumption.

7. County health officers shall furnish the water and sewage laboratory of the State board of health with lists of ice dealers in their districts.

8. Fees for the services rendered under these rules and regulations pertaining to ice supplies shall be payable by the manufacturer or owner of the ice plant January 1 of each year to the director of the water and sewage laboratory of the State board of health at the University of Kansas, Lawrence, Kans.

9. Fee shall be \$15 annually for each source of supply of ice which is sold for domestic consumption.

[PRIVIES, CESSPOOLS, AND DRAINS—OFFENSIVE TRADES (REG. BD. OF H., MAR. 20, 1916).]

RULE 1. *Abandoned wells.*—The use of abandoned wells as cesspools is prohibited.

RULE 2. *Concerning privy vaults, cesspools, etc.*—No privy vault, cesspool, or reservoir into which a privy vault, water-closet, stable, or sink is drained, except it be water-tight, shall be permitted within 50 feet of any well, spring, or other

source of water used for drinking and culinary purposes; nor shall any such open into any stream, ditch, or drain, except common sewers, nor shall any such be drained into an underground flow of water or water stratum which is used as a source of water supply.

RULE 3. Drains.—All drains carrying domestic sewage containing human or animal excreta passing within 50 feet in ordinary soil, or 80 feet in sandy soil, of any source of water supply shall be water-tight.

RULE 4. Refuse matter; nuisance.—The collection of refuse matter in or around the immediate vicinity of any dwelling or place of business, such as swill, waste of meat, fish or shells, bones, decaying vegetables, dead carcasses, excrement, or any kind of offal that may decompose and generate unhealthy gases, and thus affect the purity of the air, shall be considered a nuisance, and must be removed or disposed of, either by burial, burning, or otherwise, and in such manner as not to be offensive.

RULE 5. Piggens.—No piggens shall be maintained within 100 feet of any well or spring of water used for drinking purposes, or within 30 feet of any street or 50 feet of any inhabited house. Such pens shall be kept in such a manner as not to be offensive by being freely deodorized at short intervals. No swine shall be kept within the limits of any incorporated city between May 1 and November 1 of any year.

RULE 6. Unwholesome manufactory.—No person or company shall maintain any manufactory or place of business, such as tanneries, establishments for boiling bones of dead animals, manufacturing of fertilizer, rendering plants, etc., where unwholesome, offensive, or deleterious odors, gases, smoke, or exhalations are generated, except such establishments shall be kept clean and wholesome; nor shall any offensive or deleterious or waste substance, refuse, or injurious matter from such establishments be allowed to accumulate upon the premises, or be thrown or allowed to run into any public waters, stream, watercourse, street, road, or public place; and every person or company conducting such manufactory or business shall use all reasonable means to prevent the escape of smoke, gases, and odors, and to protect the health and safety of all operatives employed therein.

KENTUCKY.

[CARROLL'S KENTUCKY STATUTES, 1915.]

1278. *Polluting watercourse, spring or pond.*—If any person shall cast or place the carcass of any cattle, or that of any other dead beast, in any watercourse, or within 25 yards thereof, or shall cast the same into any spring or into any pond, such person, for every such offense, shall be fined for the first offense not less than \$5 nor more than \$20 and every subsequent offense not less than \$20 nor more than \$100.

2040. *Regulations of State board of health.*— * * * [The State board of health] are * * * empowered to make and enforce rules and regulations to obstruct and prevent the introduction or spread of infectious or contagious diseases to or within the State. * * *

2057. *Boards may examine into causes of disease.*—The State board of health and the local boards shall have power and authority to examine into all nuisances, sources of filth, and causes of sickness that may in their opinion be injurious to the health of the inhabitants within any county in this State or in any vessel within any harbor or port in any county in this State; and whenever any such nuisance, source of filth, or cause of sickness shall be found to exist on any private property or in any vessel within any port or harbor of any county in this State, or upon any watercourse in this State, the State board of health

or local board of health shall have power and authority to order, in writing, the owner or occupant thereof, at his own expense, to remove the same within 24 hours or within such reasonable time thereafter as such board may order, and if the owner or occupant shall neglect so to do he shall be fined not less than \$10 nor more than \$100, and each day's continuance of such nuisance, or source of filth, or cause of sickness, after the owner or occupant thereof shall have been notified to remove the same, shall be a separate offense.

[ACTS OF 1916, CHAP. 20.]

SEC. 3. *Poisoning public waters.*—Any person or persons who shall place, or cause to be placed, in any of the public waters of this State any * * * liquid, berries, powder, medicine, or other thing, * * * whereby fish, great or small, may be sickened, intoxicated, or killed, or the water rendered unfit for use, or stench be produced, shall be fined not less than \$50 nor more than \$100 for each offense.¹

[PRIVIES FOR PLACES OF PUBLIC RESORT (REG. BD. OF H., SEPT. 8, 1912).]

RULE 20½. All schools, health resorts, hotels, railway stations, courthouses, and other places of public resort and use not connected with an approved system of sewerage shall, on or before January 1, 1913, construct privies upon or convenient to their premises, proportioned in size and number to the persons and sex of those likely to use the same, the privies to be located below the level or draining away from or remote as possible from the well or spring and to be modeled after the Kentucky sanitary privy or some other plan approved by the State board of health.

LOUISIANA.

[REVISED CIVIL CODE, 1912.]

360. *Natural drainage.*—It is a servitude due by the estate situated below to receive the waters which run naturally from the estate situated above, provided the industry of man has not been used to create that servitude.

The proprietor below is not at liberty to raise any dam or to make any other work to prevent this running of the water.

The proprietor above can do nothing whereby the natural servitude due by the estate below may be rendered more burdensome.

¹ Section 10 of this act reads: "All laws and parts of laws, general, special, or local, in conflict with the provisions of this act as to the fish laws of this State, are repealed in so far as they so conflict herewith."

Certain sections in the Kentucky Statutes of 1915 which are wholly or in part replaced or repealed by this act follow:

1253. If any person put, or cause to be put, in any stream, dam, pool, or pond any liquid, berries, powders, medicine, or other thing, * * * whereby fish, great or small, are or may be sickened, intoxicated, or killed, or the water rendered unfit for use, or stench be produced, he shall be fined not less than \$10 nor more than \$100, and imprisoned in the county jail not less than 30 days nor more than 6 months, in the discretion of the jury, for each offense.

1895. Any person or persons who shall place or cause to be placed in any of the waters of this State any drug, poisonous substance, or medicated bait, with intent thereby to injure, poison, or catch fish, shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than \$20 nor more than \$50 for each offense.

1900. Any person or persons who shall place, or cause to be placed, in any of the running waters designated in section 1899 [all public running waters] any drug, injurious substance, medicated bait, * * * with intent to injure, poison, or catch fish, shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than \$50 nor more than \$100 for each offense, and cost of prosecution.

661. *Use of flowing water.*—He whose estate borders on running water may use it as it runs for the purpose of watering his estate or for other purposes.

He through whose estate water runs, whether it originates there or passes from lands above, may make use of it while it runs over his lands; but he can not stop or give it another direction, and is bound to return it to its ordinary channel where it leaves his estate.

665. *Necessary or well.*—He who wishes to dig a necessary or well against a wall, whether held in common or not, is bound to build another wall 1 foot thick; and when there is a well on one side and a necessary on the other there shall be 4 feet of masonry betwixt the two, including the thickness on both sides; but between two wells 3 feet interval are [sic] sufficient.

[REVISED STATUTES, 1915.]

679. *Sanitary code.*— * * * It [the State board of health] shall prepare or cause to be prepared a sanitary code for the State of Louisiana which shall contain and provide rules and regulations and ordinances of a general nature for the improvement and amelioration of the hygiene and sanitary condition of the State * * * and said code shall contain general rules in regard to such health, sanitary, and hygienic subjects, as can not, in the opinion of the State board of health, be efficiently and effectively regulated by the local boards. * * *

683. *Inspector of buildings and premises.*—It shall be and is hereby made the duty of the board of health in the city of New Orleans, to make, or cause to be made, a thorough and complete inspection of all buildings and premises within the limits of the city of New Orleans, occupied or used as dwelling houses, boarding houses, tenement houses, lodging houses, hotels, or private residences * * * to ascertain and determine whether such premises have, or possess, sufficient or adequate water supply, or means of water supply necessary for health and cleanliness, as provided in this act * * *.

694. *State supply.*—It shall be and is hereby made the duty of the owner of any premises or building, situated within the limits of the city of New Orleans, described or referred to in * * * [sec. 683] to provide and furnish every such premises and building with adequate water supply, by means of either suitable hydrant connection with the system of public-water supply or water-works in said city, with cistern capacity for receiving, holding, and storing at least 200 gallons of water for each and every habitable room in the buildings, on said premises, excluding in such estimate all rooms not in the main building or buildings on said premises, unless such room, situated in a wing or out-house, shall be used as a sleeping room or for lodgers, and in case there shall be any stable or place for stabling animals on said premises, in actual use for said purposes.

695. *Where owners do not live in New Orleans, etc.*—In all cases where the owner or owners of the property and premises referred to in this act shall not reside in the city of New Orleans, or where such property shall belong to an estate, succession, or corporation, it shall be the duty of the agent or representative of the owners thereof, or the person who shall have charge of said property for the owner thereof, or who shall collect the rent of such premises, if the same are under lease, to provide and furnish to such premises the adequate means of water supply by hydrant or cistern at the expense of the true owner or owners thereof, upon notice of any deficiency in that respect as provided in this act; and in case such person or representative of the owner shall fail or neglect to supply the same to such premises after due notice thereof, as provided in this act, such person shall be liable to all the fines and penalties prescribed in this act.

696. *Owners of premises to install water supply.*—When the board of health shall be satisfied, from the inspection provided for in this act, that any building or premises has not been, by the owner or owners thereof, furnished and provided with the adequate means of water supply required by this act, and that any building or premises is deficient in that respect, the board of health shall cause the owner of such premises or the agent or representative of said owner, in the event said owner is not a natural person or is not at the time within the city of New Orleans, to be notified of such defect or deficiency in water supply on such premises, and if such premises shall remain so deficient in means of water supply more than 15 days after such notification, maliciously or through negligence of the owner thereof, the owner of such premises or the person who represents such owner or owners shall be liable to a fine of \$25, and the further fine of \$10 for each and every month during which such person shall allow such premises to so remain deficient in means of water supply.

698. *Penalties.*—It shall be the duty of the board of health to cause all persons guilty of or charged with any violation of the provisions of this act to be arrested and taken before the recorder's court having jurisdiction of offenses against the ordinances and regulations of the city of New Orleans or such tribunal as may hereafter be created having such jurisdiction to hear and determine offenses prescribed by the ordinances and regulations of the city of New Orleans, and said court shall hear and determine such charge and complaint in a summary and prompt manner, and if such court shall find the accused guilty of any offense described in this act, said court shall condemn such offender to pay the sum prescribed by this act as a penalty for such offense, and in the event that such fine is not at once paid and satisfied, with costs, it shall be the duty of such court to remand offender to the parish prison in said city until such fine and costs are paid: *Provided*, that no person shall be detained and kept in custody for the nonpayment of any such fine longer than 10 days for each fine or offense, and it shall be the duty of such court to keep a separate book in which shall be entered the true and exact amount of all fines recovered for violations of this act; the date when the fine was imposed and when collected, and shall pay the same over to the secretary of the board of health, and take his receipt therefor, which shall be his voucher for such payment.

1853. *Depositing carcasses in streams.*—It shall be unlawful for any person or persons to throw or cause to be thrown into the rivers, bayous, or lakes of this State the carcass of any dead animal.

1854. *Penalties.*—Any person or persons found guilty of throwing into the rivers, bayous, or lakes of this State any dead animal contrary to the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$25 or imprisoned in the parish jail not more than one month, or both, at the discretion of the court.

1859. *Prohibiting willful contamination of public water supplies.*—It shall be and it is hereby declared unlawful and a misdemeanor to knowingly and willfully contaminate any stream, wells, lake, pond, or body of water from which the public water supply of any city of this State is taken, by knowingly and willfully placing or causing to be placed therein the dead body of any animal or animals or any offensive or filthy matter, or from doing any other act tending to corrupt, injure, or contaminate said water supply; or for anyone knowingly and willfully to permit to escape or drain from his premises into said water supply any substance or fluid tending to contaminate or injure said water supply, or willfully and knowingly to permit to escape from his premises or property any sewerage [sic] or fluid into the said water supply that would injure the quality of the said water or contaminate it.

1860. *Penalties.*—For each and every violation of this statute there shall be imposed a fine of not less than \$5 nor more than \$100, or imprisonment not less than 1 day nor more than 30 days in the parish jail; one or both at the discretion of the court.

1863. *Prohibiting befouling of water supplies.*—It is hereby declared unlawful and a misdemeanor for any officer, manager, or employee of any corporation or any person acting for himself, or for anyone else to knowingly and willfully empty or drain into, or permit to be drained from any pumps, reservoir, wells, or oil fields into any of the natural streams or drains of the said State, from which water is taken for irrigation purposes any oil, salt water, or other noxious or poisonous gases or substances which would render said water unfit for irrigation purposes or would destroy the fish in said streams: *Provided*, That the operators or owners of wells shall have the right to turn their water from wells, reservoirs, or tanks into the rivers, bayous, streams, or other waterways, between September 1 and March 1 of each year, and are prohibited from doing so between March 1 and September 1 of each year. Said owners or operators shall provide reservoirs or tanks and shall keep the water out of the said streams or waterways during the close season, and shall pay for a watchman night and day to prevent leaks, breaks, secret pipes or violations of this law. It shall also be the duty of said operators or owners to plainly indicate to whom each reservoir or tank belongs by posting same, and shall be subject to inspection at all times by the legal authorities.

1864. *Penalty.*—For each and every violation of said act [sec. 1863] there shall be imposed upon any person so offending, whether acting in his individual capacity or for others, a fine not less than \$100 nor more than \$2,000, or imprisonment in the parish jail not less than 30 days nor more than three months in the discretion of the court trying the same.

1865. Each¹ and every day that said oil, salt water, or other substances is permitted to flow into such streams, shall constitute a separate offense.

3319. *Unlawful to puddle waters.*—It shall be unlawful for any person to muddy or "puddle" any waters for the purpose of taking fish thereby.

3321. *Putting drugs, etc., into streams.*—In order to prevent the killing of fish, it shall be unlawful for any person * * * to throw or place acids, or lime which have² not been used in manufacturing or commercial processes, india berries, sawdust, green walnuts, walnut leaves, or any other deleterious substance into, or on, or where it will run into the waters of the bayous, lagoons, ponds, lakes, bays, rivers, sound, or in the Gulf of Mexico within the territory of jurisdiction [territorial jurisdiction ?] of this State.

3322. *Penalty.*—Any person violating the provisions of the foregoing section shall be deemed guilty of a misdemeanor and shall, on conviction thereof, pay the costs of the prosecution and be imprisoned in the parish jail for not less than five days nor³ more than 12 months, at the discretion of the court, and subject to work on the public roads as provided by law, and, in the event of the costs not being paid, an additional day for each day of the jail sentence shall be decreed by the court.

5147. *New Basin Canal may not be used as drain.*—* * * It shall be the special duty of the board of control and the superintendent [of the New Basin Canal] to see that the New Basin Canal is not used for drainage purposes by the city of New Orleans, or any part thereof, or by any corporation or individual whatsoever. It is hereby specially made their duty to have all inlets

¹Text reads "For each."

²Text reads "has."

³Text reads "and."

which serve for drainage into said canal, and particularly what is known as the Louque Cut, closed at the expense of the city or other party responsible therefor. * * *

The board of control is specially authorized to sue for and recover damages caused by any drainage into the canal, and empowered by injunction or other legal proceeding to protect the canal from such use.

7104. *Waters in all bayous, etc., are the property of the State.*—The waters of and in all bayous, lagoons, lakes, and bays, and the beds thereof, within the borders of the State not at present under the direct ownership of any person, firm, or corporation are hereby declared to be the property of the State. There shall never be any charge assessed against any person, firm, or corporation for the use of the waters of the State for municipal, agricultural, or domestic purposes.

7105. *Water and beds of navigable streams are the property of the State.*—While acknowledging the absolute supremacy of the Federal Government over the navigation on and in the navigable waters within the borders of the State, yet nevertheless it is hereby declared and affirmed that the ownership of the water itself and the beds thereof in said navigable streams is vested in the State, and that the State has the right to enter into possession of said waters when not interfering with the control of navigation exercised by the Federal Government thereon: *Provided* this act [secs. 7104 and 7105] is not intended to interfere with the acquisition in good faith of any waters or the beds thereof transferred by the State or its agencies prior to the passage of this act: *Provided further*, This act shall not affect the acquisition of property by alluvion or accretion.

[ACTS OF 1917, P. 18.]

SECTION 1. *Penalty for damaging water supplies used for troops.*—Any person who shall interfere with, damage, or injure any source of supply for water * * * for troops in the employment of the State of Louisiana or of the United States shall be punished by a fine of not less than \$500 nor more than \$5,000, and by imprisonment in the penitentiary for not less than one year nor more than five years.

[OYSTERS AND OYSTER HOUSES. (REG. BD. OF H., DEC. 26, 1912).]

574. (a) It is unlawful to ship or sell oysters or other shellfish to which water has been added, either directly or in the form of melted ice.

(b) It is furthermore unlawful to ship, sell, or have in possession for sale within this State oysters or other shellfish which have become contaminated or polluted because of having been taken from insanitary or polluted beds, or because of having been packed under insanitary conditions, or because of having been handled in an uncleanly or insanitary manner.

(j) Toilet facilities must be provided, but they must be so located and constructed that there will be no danger of pollution from this source, and the closets must be kept clean.

[REG. BD. OF H., FEB. 26, 1913.]

Sanitary Code amended by adding section 398 (b):

SEC. 398. (b) All regulations regarding stables, the storing of manure, garbage, and refuse and the sanitation of places where animals are kept shall be equally applicable to rural localities, however isolated, as to neighborhoods, municipalities, towns, and cities.

[WATER SUPPLIES. (REG. BD. OF H., AUG. 20, 1913).]

The Sanitary Code was amended by adding the following to chapter 13, on page 102:

"Whenever any person or corporation furnishing water for potable purposes finds it necessary for any reason whatever to make any change, temporary or permanent, in the operation of their plant or in the manner of furnishing such water, which may in any way, either temporarily or permanently, tend to deteriorate the potable qualities of the water so furnished, by pumping directly into reservoirs or supply mains untreated water, when the ordinary supply is subjected usually to some form of purification treatment, or any other similar or dissimilar change in said supply, the tendency of which is to cause polluted waters to be forced into distributing pipes, the said person or corporation, before making such changes, or, in case of emergency, requiring the immediate making of changes in the operation of the plant, or in the manner of furnishing such water, within six hours of making such change, shall notify the local board of health, and shall also notify by telegraph or telephone the State board of health as to character and estimated duration of such change."

By amending paragraph 279 so as to read as follows: "It shall be unlawful for any person to use water from any canal, sewer, ditch, or other excavation in the ground within the limits of any city, except such wells as have been approved by the State board of health, for the purpose of making bread or any other article intended for human consumption or subsistence; nor shall any person use the water so procured for the purpose of washing or cleansing implements or utensils used in the preparation, manufacture, or vending of any article or commodity intended for or used as human food or drink."

In paragraph 281, by inserting before the word "well" in the first line the word "shallow."

(The paragraph as amended reads as follows:)

"281. It is hereby made unlawful to excavate or sink a shallow well on any premises used as a bakery or bake shop."

In paragraph 282: By changing last clause to read "that nothing herein shall be construed as prohibiting the boring of deep or artesian wells."

(The paragraph as amended reads as follows:)

"282. Upon any such premises where a well now exists, it shall be the duty of the owner of the property to cause same to be immediately filled up to the surface of the ground: *Provided*, That nothing herein shall be construed as prohibiting the boring of deep or artesian wells."

By inserting in chapter 13 the following:

"It shall be the duty of the mayor of each city, and of the proper officers of all private corporations, partnerships, and of individuals who shall hereafter install a waterworks system, or shall make any changes in any existing system, to file with the State board of health a true and correct copy of the plans and specifications of the entire system to be installed or changed by such city, corporation, partnership, or individual, including plans and specifications of such filtration or other purification plant as may be operated by them in connection therewith, and also plans and specifications of all alterations, additions, or improvements to such systems which may be made from time to time.

"The words 'plans and specifications' as used here shall be construed to mean a true description or representation of the entire system and also a full and fair statement of how the same is to be operated and, in addition to all other things, shall show all the sources through or from which water is or may be at any time pumped or otherwise caused or permitted to enter such system. Such plans and specifications shall be certified by the mayor and the

city engineer of city corporations, and by such proper officers and the engineer employed by a private corporation for private corporations, and by some individual member of a partnership, or by the individual owner in case of a waterworks owned and operated by partnerships or individuals, including the engineer employed, if any."

On receipt of the plans and specifications by the State board of health they will be inspected with reference to their effect on the public health, and if such board on inspection finds that the proposed water supply is impure and dangerous to individuals or to the public generally, or that the proposed purification system is inadequate to supply a safe water, the said board on its order may require the corporation, partnership, or individual owning and operating the same to make such alterations in such waterworks systems as may be required or advisable in the opinion of said board, in order that the water supply may be healthful and free of pollution. Such recommendations or orders of the State board of health shall be served in writing on such corporations, partnerships, or individuals, and it shall thereupon be the duty of such corporations, partnerships, or individuals to comply with such recommendations or orders.

[SEWERAGE SYSTEMS. REG. BD. OF H., AUG. 20, 1913.]

The sanitary code was amended by inserting under regulations concerning drains and sewers the following:

It shall be the duty of the mayor of each city and of the proper officer of all private corporations, partnerships, and of individuals who shall hereafter install a sewerage system for any city or town in the State, or shall make any additions or changes in existing system, to file with the State board of health a true and correct description of such system. Such plans and specifications shall, upon their receipt by the State board of health, be inspected with reference to their effect upon the public health, and if such board finds that such sewerage systems or any part thereof are dangerous to individuals or to the public health generally, the said board on its order may require such alterations as may be required or advisable.

[TOILETS AND URINALS. REG. BD. OF H., AUG. 20, 1913.]

The sanitary code was amended by adding to chapter 18, paragraph 413: "Toilets and urinals shall be in a space which is well lighted and well ventilated and which is separated from space used for any other purpose by walls extending from floor to ceiling. Doors to toilet rooms must fit tightly and be self-closing, except when doors open to outside of building or to open court."

[CONSTRUCTION AND CARE OF PRIVIES. REG. BD. OF H., AUG. 20, 1913.]

The sanitary code was amended by substituting for section 366 the following as section 366:

No privy or water-closet shall hereafter be maintained or built except such as are so constructed as to render them fly proof and easily cleaned. They shall be of wood, brick, or other material approved by the Louisiana State Board of Health, as follows:

(a) The floor shall be solid and water-tight, covering the entire base of the building inside the walls.

(b) The house shall be without cracks through which flies may enter. It shall be provided with a tight self-closing door and shall be lighted and ventilated by one or more openings, said opening or openings to give space not less than 4 square feet; all openings, whether for ventilation or otherwise, which

are not provided with doors, windows, or shutters shall be screened with 18-mesh cross wire per inch. Doors shall be kept closed.

(c) The roof of each privy or earth closet shall be water-tight, and if sloped to the rear of the house it shall project not less than 6 inches beyond the rear wall of the house.

(d) The seat shall have a self-closing hinged cover over the box opening. That flies may be excluded, the compartment under the seat, in which stands the night-soil container, shall be tightly constructed of sound lumber without cracks or crevices. Any opening in this compartment for ventilation shall be screened with 18-mesh crossed per inch wire.

(e) The box, tub, or can soil container shall be strongly constructed. It shall rest on the floor of the privy in such a position that its top shall not be more than 1 inch below the under surface of the closet seat. Whenever such box, tub, or can container shall cease to be water-tight it shall be replaced by a sound one.

(f) There shall be at the back or side of each privy an opening for the removal of the night-soil container, which opening shall be provided with a tightly fitting let-down board, or 18-mesh cross wire per inch cover, hinged to the house and so constructed as to prevent the access of flies to the night soil. This cover shall be provided with a hook or button and shall always be kept closed. Where practicable, the opening shall abut on a public alley so as to be readily accessible to the city scavenger.

(g) No privy shall be built or maintained within 20 feet of the line of any street or any house, or within 50 (preferably 100) feet of any well, or within 3 feet of the party line of the adjacent lot or lots, except in the rear or side of lots where they abut on the public alley.

(h) Whenever, in the opinion of the State board of health, the condition of any privy is such that it can not be put in sanitary condition the State board of health shall order a new privy constructed in conformity with the foregoing regulations.

(i) All privies shall be kept clean at all times. The excrement shall be removed at least once each week, seat scoured, and building thoroughly cleaned so as to prevent objectionable odors. The door of the house must not be left open.

(j) No wash water, garbage, kitchen slops, or other liquid waste shall be emptied into the privy. No night soil from any person suffering from typhoid fever or other serious bowel trouble shall be emptied into any privy without being previously disinfected in such manner as directed or approved by the State board of health.

(k) Every hotel, restaurant, residence, sleeping apartment, factory, mill, store, workshop, mercantile establishment, theater, picture show, or other places where people are employed, live, or congregate shall be provided with one or more privies, one seat for every 25 or fraction thereof, with separate apartments for the sex and color, and they shall be provided with proper wash and dressing rooms with an abundance of water, soap, and individual towels, and kept at all times in a cleanly state and free from effluvia arising from drain, privy, or otherwise. In public places, stores, etc., the privies shall be plainly designated for color and sex, provided with a supply of toilet paper, and no person shall be allowed to enter or use any such closet or privy assigned to persons of the other color or sex.

(l) Where there is an established system of waterworks and sewer system, all privies located on premises within 300 feet of sewer main or lateral shall be connected with the waterworks and sewer.

[DISCHARGE OF WASTE INTO WATERS. REG. BD. OF H., MAY 19, 1914.]

Section 365 of chapter 15 of the sanitary code was amended so as to read as follows:

"No person, persons, company, or corporation shall cause, permit, or allow any sewage, drainage, factory refuse, or any foul or offensive liquid or other material to flow, leak, escape, or be emptied or discharged into the waters of any river, stream, canal, harbor, bay, or estuary, or into the sea within the city limits, excepting below low-water mark, and in such manner and under such conditions that no nuisance can or shall be caused thereby or as a result thereof.

"The discharge of skimmings, filter-press mud, filtrates, acid, or alkali wash waters, spoiled sirups, or of other polluting materials, from plants making or refining sugar, into lakes, rivers, bayous, or other streams is prohibited.

"The above waste shall be discharged onto fields so that the liquid portion thereof will filter through the soil before reaching the drainage ditches.

"All sugar houses must be equipped with the necessary equipment, such as collecting vats, pumps, and piping, to carry out this regulation.

"This regulation shall not apply where the wastes are discharged into the Mississippi River or into ditches leading to swamps or bayous where, in the opinion of the State board of health, no nuisance or menace to health will result from such discharge."

[WATER SUPPLIES. REG. BD. OF H., APR. 11, 1916.]

Section 285 of chapter 13 of the Sanitary Code of Louisiana has been amended by adding the following paragraphs:

285 (a). When water supply of any village, town, city, railroad station, public or office building, water tank or water plant, or any source of supply for human consumption is examined by the State board of health and found unfit for human consumption the public shall be notified by the posting on source of condemned supply a warning metal sign (not less than 6 by 12 inches) with red background and white letters that may be read at 120 feet.

285 (b). The standard of purity shall be the same as that required by the United States Public Health Service and promulgated by the Treasury Department.

285 (c). It shall be unlawful for any person to remove, cover up, take down, or otherwise destroy the sign or other notice placed by any board of health, health officer, or duly authorized representative of said board, warning the public "Do not drink this water."

[GARBAGE, REFUSE, AND DEAD ANIMALS. REG. BD. OF H., APR. 11, 1916.]

The following section has been inserted after section 477 of chapter 21 of the Sanitary Code of Louisiana:

SEC. 477-A. (a) No house refuse, offal, garbage, dead animal, decaying vegetable matter, or organic wastes of any kind shall be thrown upon any street or road.

(b) No garbage dump or place of deposit shall be maintained at any point in the State unless provision be made for prompt destruction of material deposited. Destruction shall be by incineration or other effective means to prevent the breeding of flies, harboring of rats, or the creating of a nuisance.

(c) No such refuse, putrescible, decaying animal or vegetable matter shall be kept in any house, cellar, outhouse, or on premises for more than 48 hours in any incorporated or unincorporated village, town, or city or built-up community.

(d) No person shall throw or deposit any garbage, offal, night soil, dead carcasses of animals, or filth into or where same would drain into any public or private well, cistern, or other water supply.

(e) All receptacles for temporary storage for handling of garbage, etc., shall be water-tight and be provided with suitable tight-fitting covers, which shall be kept properly adjusted to the receptacles so that flies or insects, rats, or other animals may not have access to contents.

(f) All garbage or refuse containers shall be emptied at least once every 48 hours, and containers cleaned and aired before being replaced for service.

(g) No garbage or waste destruction plant shall be built, nor any place of disposal maintained, unless approved by the local or State board of health.

MAINE.

[REVISED STATUTES, 1903, CHAP. 18.]

8. *Regulations of State board of health* (as amended by Public Laws, 1915, chapter 328).—* * * And the said board of health may from time to time, make, alter, modify, or revoke rules and regulations for guarding against the introduction of any infectious or contagious diseases into the State, including rabies, or hydrophobia of animals and men; for the control and suppression thereof if within the State; for the quarantine and disinfection of persons, localities and things infected or suspected of being infected by such diseases; for guarding against the transmission of infectious and contagious diseases through the medium of common towels, common drinking cups, and other articles which may carry infection from person to person; * * *.

65. *Depositing carcass of dead animal where it may cause nuisance*.—Whoever personally or through the agency of another leaves or deposits the carcass of a dead horse, cow, sheep, hog, or of any other of the larger domestic animals in any place where it may cause a nuisance shall, upon receiving a notice to that effect from the local board of health, promptly remove, bury or otherwise dispose of such carcass, and if he fails to do so within such time as may be prescribed by the local board of health, and in such manner as may be satisfactory to such board of health, he shall be punished by a fine of not less than \$5 nor more than \$25 or by imprisonment not exceeding one month.

[REVISED STATUTES, 1903, CHAP. 20.]

8 (as amended by acts of 1907, chapter 60). *Location of cemeteries near wells*.—* * * Nor shall any person, corporation, or association establish, locate, or enlarge any cemetery or burying ground, by selling or otherwise disposing of land, so that the limits thereof shall be extended nearer any dwelling house or well within 25 rods, against the written protest of the owner; *Provided*, That nothing in this section shall prohibit the sale or disposition of lots within the limits of any existing cemetery or burying ground, nor the extension thereof away from any dwelling house or well.

[REVISED STATUTES, 1903, CHAP. 22.]

5. *Nuisances*.—* * * corrupting or rendering unwholesome or impure the water of a river, stream, or pond * * * are nuisances * * *.

11. *Water mills and dams may not be nuisances*.—The erection and maintenance of water mills and dams to raise water for working them upon or across streams not navigable, as provided in chapter 94 [of Revised Statutes, 1903], shall not be deemed a nuisance unless they become offensive to the neighbor-

hood or injurious to the public health, or unless they occasion injuries or annoyances of a kind not authorized by said chapter. * * *

12. *Penalty.*—Whoever erects, causes, or continues a public or common nuisance, as herein described or at common law, where no other punishment is specially provided, may be fined not exceeding \$100; and the court, with or without such fine, may order such nuisance to be discontinued or abated, and issue a warrant therefor, as hereinafter provided. (Secs. 14-17, giving process of abatement of nuisance, are not given in this appendix.)

13. *Action for damages.*—Any person injured in his comfort, property, or the enjoyment of his estate by a common and public or a private nuisance may maintain against the offender an action on the case for his damages, unless otherwise specially provided.

[REVISED STATUTES, 1903, CHAP. 94.]

1. *Right to erect mill dams.*—Any man may, on his own land, erect and maintain a water mill and dams to raise water for working it, upon and across any stream not navigable; or, for the purpose of propelling mills or machinery, may cut a canal and erect walls and embankments upon his own land, not exceeding 1 mile in length, and thereby divert from its natural channel the water of any stream not navigable, upon the terms and conditions and subject to the regulations hereinafter expressed. (Only the regulations affecting the question of pollution of the water will be cited.)

2. *Where dam injures another mill or canal.*—No such dam shall be erected or canal constructed to the injury of any mill or canal lawfully existing on the same stream * * *.

34. *Owner liable for pollution by wastes from his mill.*—The owner or mortgagee in possession, as well as any tenant, of any mill used for manufacturing lumber, is liable for the acts of such tenant in unlawfully obstructing or diverting the water of any river or stream, by the slabs or other mill waste from his mill, but no action shall be maintained therefor without a demand of damages, at least 30 days prior to its commencement. Such unlawful obstruction or diversion by the tenant shall, at the election of the owner or mortgagee and on written notice to the tenant, terminate his tenancy.

[REVISED STATUTES, 1903, CHAP. 128.]

5. *Penalty for willful injury to ice.*—Whoever willfully and wantonly or maliciously cuts, injures, mars, or otherwise destroys or damages ice upon any waters from which ice is or may be taken as an article of merchandise, whereby the taking thereof is hindered or the value of the same is diminished for that purpose; or whoever willfully and wantonly or maliciously incites or procures another to do so, shall be punished by fine not exceeding \$500 or by imprisonment not exceeding one year; and it is not necessary to allege or prove the title or ownership of the ice so cut, injured, marred, damaged, or destroyed.

[REVISED STATUTES, 1903, CHAP. 129.]

1 (as amended by Acts of 1917, Chap. 126).¹ *Prohibiting poisoning water supplies.*—Whoever knowingly and willfully poisons, defiles, or in any way corrupts the waters of any well, spring, brook, lake, pond, river, or reservoir, used for domestic purposes for man or beast, or knowingly corrupts the sources of

¹ Amending law reads "Section 1 of Chap. 130 of the Revised Statutes is hereby amended, etc." Section amended is in Chap. 129.

any public water supply, or the tributaries of said sources of supply in such manner as to affect the purity of the water so supplied, or knowingly defiles such water in any manner, whether the same be frozen or not, or puts the carcass of any dead animal or other offensive material into said waters, or upon the ice thereof, shall be punished by a fine not exceeding \$5,000 or by imprisonment for any term of years.

[ACTS OF 1905, CHAP. 77.]

SEC. 1. *Dead fish not to be cast into rivers.*—It shall be unlawful to cast or deposit upon the shores, or release and deposit in the bays, harbors, or rivers of this State any dead fish or fish that have been smothered or injured so that they will die.

SEC. 2. *Penalty.*—All persons willfully violating the provisions of this act, or aiding therein, shall be liable to a penalty of \$100, or imprisonment¹ not exceeding 30 days, or both, as the court before which the complaint or indictment for the violation of the preceding section may be instituted shall determine.

SEC. 3 (as amended by acts of 1900, chap. 56). *How penalty is to be recovered—Disposal of fines.*—The penalty provided for by the preceding section may be recovered in the county where the offense is committed by complaint, indictment, or action of debt brought in the name of the person making the complaint; and all fines and penalties recovered by this act shall go, one half to the person making the complaint and the other half to the commissioner of sea and shore fisheries, and by said commissioner of sea and shore fisheries paid to the State treasurer to be added to and made a part of the appropriation for sea and shore fisheries.

[ACTS OF 1913, CHAP. 206.]

SEC. 13. *Putting meat, dead fish, etc., in inland waters prohibited.*—Whoever deposits any meat, bones, dead fish, or parts of the same, or other food for fish, in any of the inland waters of the State, for the purpose of luring fish, known as "advance baiting," shall pay a fine of not less than \$10 nor more than \$30 and costs of prosecution for each offense.

SEC. 14. *Prohibiting putting into certain streams any lumber-mill waste.*—No person or corporation shall place or deposit in any of the lakes or ponds of the State, or into any of the following named rivers, brooks, and streams, to wit: * * * or allow the same to be done by anyone in their employ, any slabs, edgings, sawdust, chips, bark, mill waste, shavings, or fibrous material created in the manufacture of lumber, or place or deposit the same on the banks of any of the above-named waters in such negligent or careless manner that the same shall fall or be washed into the same, or with the intent that the same shall fall or be washed into the same.

Whoever violates any of the provisions of this section shall pay a fine of not less than \$5 and not exceeding \$100 and cost for each offense.

[PUBLIC LAWS, 1917, CHAP. 98.]

SECTION 1. *Public utilities commission to consult with cities and towns as to water supply, etc.*—The public utilities commission shall consult with and advise the authorities of cities and towns and persons and corporations having, or about to have, systems of water supply, drainage, or sewage, as to the most appropriate source of water supply and the best method of assuring its purity

¹ Law reads "or by imprisonment."

² It appears unnecessary to name the streams.

or as to the best method of disposing of their drainage or sewage with reference to the existing and future needs of other cities, towns, or persons or corporations which may be affected thereby. It shall also consult with and advise persons or corporations engaged or intending to engage in any manufacturing or other business whose drainage or sewage may tend to pollute any inland water, as to the best method of preventing such pollution, and it may conduct experiments to determine the best method of the purification or disposal of drainage or sewage. No person shall be required to bear the expense of such consultation, advice, or experiment. Cities, towns, persons, and corporations shall submit to said commission for its advice their proposed system of water supply or of the disposal of drainage or sewage and all petitions to the legislature for authority to introduce a system of water supply, drainage, or sewage shall be accompanied by a copy of the recommendation and advice of said commission thereon. In this section the term "drainage" means rainfall, surface, and subsoil water only, and "sewage" means domestic and manufacturing filth and refuse.

Sec. 2. *Commission to investigate pollution of streams on request of mayors, etc.*—Upon petition to said commission by the mayor of a city or the selectmen of a town the managing board or officer of any public institution, or by a board of water commissioners, or the president or other official of a water or ice company, stating that manure, excrement, garbage, sewage, or any other matter pollutes or tends to pollute the waters of any stream, pond, spring, or watercourse used by such city, town, institution, or company, as a source of water supply, the commission shall appoint a time and place within the county where the nuisance or pollution is alleged to exist for a hearing, and after such notice thereof to parties interested and a hearing, if in its judgment the public health so requires, may, by an order served upon the party causing or permitting such pollution, prohibit the deposit, keeping, or discharge of any such cause of pollution; but the commission shall not prohibit the cultivation and use of the soil in the ordinary methods of agriculture if no human excrement is used thereon. Said commission shall not prohibit the use of any structure which was in existence on or before the first day of January, 1917, upon a complaint made by any city, town, corporation, or water district, water or ice company, unless such city, town, corporation, water district, water or ice company, unless such city, town, corporation, water district, or company files with said commission a vote of its city council, selectmen, corporation, water district, or company that such city, town, corporation, water district, or company will, at its own expense, make such changes in said structure or its location as said commission shall deem expedient. Such vote shall be binding on such city, town, corporation, water district, or company, and all damages caused by any such change shall be paid by such city, town, corporation, water district, or company. If the parties can not agree thereon the damage shall, on petition of either party, filed within one year after such changes are made, be assessed by a jury in the supreme judicial court for the county where such structure is located.

Sec. 3. *Appeal from order passed under provisions of section 2.*—Whoever is aggrieved by an order passed under the provisions of the preceding section may appeal therefrom to the supreme judicial court sitting in the county where appellant resides; but such notice of the pendency of the appeal as the court shall order shall also be given to the board of water commissioners and the mayor of the city or chairman of the selectmen of the town or president or other officer of the water or ice company interested in such order. While the appeal is pending the order of the commission shall be complied with unless otherwise authorized by the commission.

SEC. 4. *Supreme judicial court to restrain pollution pending carrying out of orders of commission.*—The supreme judicial court shall have jurisdiction in equity, upon the application of the public utilities commission or of any party interested, to enforce its orders, or the orders, rules, and regulations of said public utilities commission, and to restrain the use or occupation of the premises or such portion thereof as said commission may specify, on which said material is deposited or kept, or such other cause of pollution exists, until the orders, rules, and regulations of said commission have been complied with.

SEC. 5. *Agents of commission may enter premises.*—The agents and servants of said public utilities commission may enter any building, structure, or premises for the purpose of ascertaining whether sources of pollution or danger to the water supply there exists and whether the rules, regulations, and orders aforesaid are obeyed.

SEC. 6. *Pollution of streams prohibited.*—Unless the public utilities commission determines that public health will not thereby be seriously injured no sewage, drainage, refuse, or polluting matter of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any pond or stream used as a source of ice or water supply by a city, town, public institution, or water company for domestic use or render it injurious to health, and no human excrement shall be discharged into any such pond or stream or upon the banks thereof if any filtering basin in use is there situated. The prohibition against the deposit of sewage, drainage, refuse, polluting matter, and human excrement shall not apply to the following rivers, namely, the Penobscot, the Kennebec, the Androscoggin, and the Saco.

SEC. 7. *Penalty.*—Whoever violates any rule, regulation, or order made under the provisions of any section hereof shall be punished for each offense by a fine of not more than \$500 to the use of the State or by imprisonment for not more than one year, or by both such fine and imprisonment.

SEC. 8. *Appropriation.*—Said commission may appoint, employ, and fix the compensation of such agents, clerks, servants, engineers, and expert assistants, as is considered by said commission necessary, and for the purpose of carrying out the provisions of this act, said commission may expend the sum of not over \$4,000 in each of the years 1917 and 1918, which sums are hereby appropriated therefor.

[ACTS OF 1917, CHAP. 197.]

SECTION 1. *Department of health created.*—There is hereby created a State department of health which shall exercise all the powers and perform all the duties now conferred and imposed by law upon the State board of health. * * *

[ACTS OF 1917, CHAP. 219.]

SECTION 24. *Use of poisonous substance for destroying fish.*—Whoever * * * shall use any * * * poisonous or stupefying substance for the purpose of destroying or taking fish * * * shall pay a fine of not less than \$10 nor more than \$30, and costs of prosecution, for each offense; and in addition thereto \$1 for each fish taken, caught, killed, or had in possession in violation of any provision of this section; and when prohibited implements or devices are found in use or possession, they are forfeit and contraband, and any person finding them in use may destroy them.

MARYLAND.

[ANNOTATED CODE, 1914.¹ ARTICLE 27.]

86. *Polluting of ice or ice ponds.*—Any person who shall enter upon the land or premises of any other person, whether such other person be the owner or lessee of said property or premises, and willfully and maliciously injure any ice upon any pond or stream of water upon said land so as to injuriously affect the quality of the same as an article for sale or use, or who shall from beyond the property or premises of any such owner or lessee willfully and maliciously thereon cast or discharge upon any such ice any substance whatever which shall so injure the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$10 nor more than \$20, or imprisoned for 30 days, in the discretion of the court; and the ownership in said ice may be laid in the indictment to be either in any of the persons who have at the time of the commission of said act the right to gather said ice for use or sale as owner or lessee of said land on which said pond or stream may be situated, or in any other person who has the legal right to gather the said ice for sale or use by license from or contract with such owner or lessee.

409A (added by Laws, 1917, Chap. 8). *Poisoning of wells, etc., prohibited.*—Every person, his aiders and abettors, who knowingly and willfully poisons, defiles, or in any way corrupts or contaminates the waters of any well, spring, brook, lake, pond, stream, river, reservoir, or other source of water supply, or any tributary thereof, used or usable for drinking or domestic purposes, by means of disease germs or bacteria or the insertion of any other poison or poisonous matter therein, or attempts so to do, or conspires or connives thereat, and every person, his aiders and abettors, who, by like means, knowingly and willfully poisons, defiles, or in any way corrupts or contaminates any drink, food or food products, or supply, or attempts so to do, or conspires or connives thereat, shall be guilty of a felony, and upon conviction thereof shall be subject to imprisonment in the penitentiary for not more than 20 years, in the discretion of the court.

420. *Prohibiting dumping in Chesapeake Bay above Sandy Point and its tributaries.*—If any ballast, ashes, filth, earth, soil, oysters, or oyster shells be taken, unladen, or cast out of any ship, steamboat, scow, puny, or other vessel on any pretense whatever in Chesapeake Bay above Sandy Point or in the waters of Herring Bay or in any river, creek, or harbor within the State below high-water mark, the master or other person having charge or command of such ship, steamboat, scow, or other vessel shall, upon conviction thereof before any justice of the peace of this State, be fined not less than \$20 nor more than \$150, one half of which amount shall be paid to the informer and the other half to the State; but anyone convicted of violating the provisions of this section shall be entitled to appeal to the circuit court for the county in which he was convicted, or to the Baltimore City court, if the offense was committed in the city of Baltimore. This section shall not, however, be construed to apply to the improvement of harbors or to affect any existing act of assembly relating to the construction of wharves or to the rights of riparian proprietors.

430. *By whom enforced.*—The commanding officer of the State fishery force is required and directed to enforce the provisions of the preceding section.

¹ Two volumes, giving all of code to 1910 except article 27 ("Crimes and punishments") were published in 1910. A third volume, published four years later, gave article 27 and the additions and amendments to the code, including this article, down to 1914.

431. *Prohibiting placing of carcasses in certain waters.*—If any person shall place, cast, or throw into the Potomac River at any point above the canal dam, near the mouth of Wills Creek, any dead body or carcass of any dog, horse, cow, hog, cat, or other animal whatsoever, or shall drown therein any animal whatsoever, or shall place, cast, or throw therein any substance whatsoever calculated to render the waters of said river impure or unfit for use, he shall forfeit and pay a sum of not less than \$20 nor more than \$100, one half to the informer and the other half to the State, to be recovered by action of debt or indictment in the county wherein the offense was committed.

482. *Water supply—Pollution of sources of.*—If any person shall put, or cause to be placed, any dead animal, or part of the carcass of any dead animal, or any decayed or filthy animal or vegetable matter into any stream, or the tributary of any stream, well, spring, reservoir, pond, or other source from which water or ice is drawn, taken or used for drinking or domestic purposes, or shall knowingly suffer any sewage, washings, or other offensive matters from any privy, cesspool, factory, trades establishment, slaughterhouse, tannery, or other place, over which he shall have control, to flow therein, or into any drain or pipe communicating therewith, whereby the water supply of any city, town, village, community, or household is fouled or rendered unfit for drinking and domestic purposes, he shall be guilty of a misdemeanor, and shall, upon conviction thereof in a court of competent jurisdiction, be fined not more than \$200 for every such offense; and after reasonable notice, not exceeding 15 days, from the State board of health, or any local sanitary authority, to discontinue the act whereby such water supply is fouled, a further sum of not more than \$50 for every day during which the offense is continued.

[ANNOTATED CODE, 1914, ARTICLE 39.]

74. *Poisoning fish.*—No person shall place in any fresh-water stream, lake, or pond, without the consent of the owner, or in the waters and estuaries with the rivers debouching into them, any lime or other deleterious substance, with the intent thereby to poison or catch fish, under a penalty of \$100.

82. *Trade wastes deleterious to fish.*—No person shall place, throw, or make use of in any of said waters (any stream above where the tide ebbs and flows), except from bona fide engineering, milling, or mining purposes, * * * any lime, poison, acid, sawdust, shaving, or other substance whatsoever deleterious to or destructive of fish life, under a penalty of not less than \$100 nor more than \$300, or imprisonment in the penitentiary for not less than one year nor more than three years, or be both fined and imprisoned in the discretion of the court: *Provided, however,* That nothing in this section shall apply to sawmills now in operation until October 1, 1903, unless said sawmill or mills shall in the meantime change its or their location: *And further provided,* That any sawmill or mills moving from its or their present location, shall be considered a new mill or mills, and shall be subject to the provisions of this section.

82A (added by Laws, 1917, Chap. 14). *Pollution to be investigated by conservation commission, etc.*—Whenever any watercourse, well, spring, open ditch, gutter, cesspool, sewer, private or public, drain, privy-pit, pigpen, or other place, or any accumulation or deposit of waste or other offensive or noxious matters discharged from any house, building, trades establishment or manufacturing place or any waste from any vessel, shall become or dangerously threaten to become deleterious to or destructive of fish or shellfish life, or the propagation, cultivation, or conservation thereof, or to their safety as human food, or in any manner a menace to said fish or shellfish, whether private or public prop-

erty, in any waters of the State, the conservation commission of Maryland shall forthwith investigate the matter, and, if it be so found, shall serve a notice in writing on the person, firm, or corporation by whose act, default, or sufferance such condition may arise or continue, requiring the abatement of the same within a time to be fixed by the commission and to be specified in the notice, under a penalty of not less than \$100 nor more than \$300, or imprisonment for not less than one year nor more than three years, or be both fined and imprisoned, in the discretion of the court. It shall be construed as a separate and distinct offense for each day the nuisance is permitted to continue after the expiration of the time limit set forth in the notice for the abatement of such nuisance; *Provided, however,* That nothing herein contained shall be deemed to alter, change, modify, or restrict the jurisdiction of the State board of health of Maryland; *Provided, however,* That the provisions of this section shall not apply to the sewerage [sic] disposal plant of any city, town, or county in this State.

[ANNOTATED CODE, 1914, ARTICLE 43.]

2 (as amended by Laws of 1914, chapter 675). *Regulations of State board of health.*—The State board of health * * * shall have the power * * * to make rules and regulations not inconsistent with law regulating the character and location of plumbing, drainage, water supply, disposal of sewage, garbage, or other waste material, and offensive trades; the sanitary condition of streets, alleys, outhouses, cesspools, and all sanitary features connected therewith; no rule or regulation, however, to carry a higher penalty than \$100 for each offense, and all such rules and regulations to bear the seal of the State board of health and be attested by its secretary and be published not less than three times in some daily newspaper published in the city of Baltimore, such rules and regulations not to be effective until 30 days after their publication.

28. *Bureau of sanitary engineering to investigate pollution of water supplies.*—The bureau of sanitary engineering [of the State board of health] shall examine into all public and private system [sic] of water supply and prepare proper maps and drawings of the same for permanent record; it shall examine and patrol as far as possible the watersheds or catchment basins of all public water systems and investigate and report upon all sources of pollution of public and private water supplies; it shall investigate and report upon all private and public systems of sewage disposal; it shall inquire into and investigate the water supply, sewage disposal * * * of schools, asylums, jails, and other public institutions; it shall inquire into and investigate offensive trades and nuisances, disposal of trades wastes, sewage and other offensive matters, and devise means for their control and perform such other duties and exercise such other functions as the State board of health or the secretary thereof shall designate.

103. *Nuisances.*—Whenever any watercourse, well, spring, open ditch, gutter, cesspool, drain, privy pit, pigpen, or other place, or any accumulation or deposit of offensive or noxious matters, or any house, building, trades' establishment, or manufacturing place is certified to the State board of health by any two legally qualified medical practitioners, or any three or more persons affected thereby, to be in a state of nuisance dangerous to health, the said board of health shall forthwith investigate the matter, and if it shall be found that the nuisance complained of is such as to injuriously affect any adjacent property or district, or is calculated to endanger the health or life of any person, the said board shall, through its proper officer, serve a notice in writing on the person, firm, or corporation by whose act, default, or sufferance the nuisance arises or continues;

or if such person, firm, or corporation can not be found, or [on] the owner or occupier of the premises on which the nuisance arises or exists, requiring him or them to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose. (Details of process of abatement of nuisance, secs. 104-6, are omitted.)

269.¹ *Waters, ice, and sewerage.*—The term "waters of the State" shall include that portion of the Atlantic Ocean and its estuaries within the State of Maryland, the Chesapeake Bay and its estuaries, and all springs, ponds, streams, wells, and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction. "Sewage" shall mean human and animal excretions, street wash, and all domestic and manufacturing waste. "Waterworks," "water supply," and "water-supply system" shall mean the sources and their surroundings from which water is supplied for drinking or domestic purposes, together with all structures, channels, and appurtenances by means of which it is prepared for use and delivered to consumers; excepting only the piping and fixtures inside the buildings served. "Sewerage system" shall mean the channels by which sewage is collected and disposed of, together with the body of water into which it is directly discharged, and all structures and appurtenances made use of in its collection and preparation for discharge in satisfactory condition into the waters of the State; excepting only the plumbing system inside the individual buildings served. For the purposes of this subtitle any sewer, no matter what its length and size may be, shall be sufficient to constitute a sewerage system.

270. *State board of health to have control over the waters of the State.*—The State board of health shall have general supervision and control over the waters of the State, in so far as their sanitary and physical condition affects the public health or comfort; and it may make and enforce rules and regulations, and order works to be executed to correct and prevent their pollution. It shall investigate all sources of water and ice supply, and all points of sewage discharge. It shall examine all existing public water supplies, sewerage systems, and refuse-disposal plants, and shall have power to compel their operation in a manner which shall protect the public health and comfort, or to order their alteration, extension, or replacement by other structures when deemed necessary. After April 16, 1914, it shall pass upon the design and construction of all public water supplies, sewerage systems, and refuse-disposal plants which shall be built within the State.

271. *State board of health to advise with counties and municipalities.*—The State board of health shall, when requested, consult with and advise the authorities of counties, municipalities, and persons having, or about to have, systems of water supply, drainage, sewerage, or refuse disposal, as to the most appropriate source of water supply, and the best method of assuring its purity, or as to the best method of disposing of drainage, sewage, or refuse with reference to the existing and future needs of all communities or persons which may be affected thereby. It shall also consult with and advise corporations, companies, and individuals engaged, or intending to engage, in any manufacturing or other business whose sewage may tend to pollute the waters of the State. It may also conduct experiments relating to the purification of water and the treatment of sewage or refuse. No county, municipality, corporation, company, or individual shall be required to bear the expense of such consultation, advice, or experiments. Information that may be given shall be only of such preliminary nature as to outline the best course to pursue, and in no case shall the State board of health be required to prepare plans,

¹ Secs. 269-288 are secs. 1-20 of Chap. 810, Acts of 1914.

specifications, or detailed estimates for any improvement unless it be specifically delegated to do so by the governor or legislature and adequate special appropriations be provided for the purpose.

272. *Plans for water or sewerage systems to be filed with State board of health.*—Every county, water, sewerage or sanitary district authority, municipality, corporation, company, institution, and individual supplying or authorized to supply, on April 16, 1914, water, sewerage, or refuse disposal service to the public, or owning water or sewerage systems, or refuse disposal plants, serving or authorized to serve the public, within the State, shall, within six months after said date, file with the State board of health a certified copy of the plans of its water supply or sewerage system, or refuse disposal plant, complete; such plans to be correct to date of submission, and to be of such scope and in such detail as to be satisfactory to the State board of health. In case no plans, or only those of insufficient scope or detail, are in existence, this section shall be complied with by the preparation of new, or the completion of the existing plans, and such investigations as may be necessary to insure the approximate correctness of the plans shall be instituted by the county, district authority, municipality, corporation, company, institution, or individual required to supply them. In case specifications of or reports on the water supply and sewerage systems or refuse disposal plants are in existence, they shall be submitted, as well as plans. The State board of health may request such other information and records concerning the water supply and sewerage systems or refuse disposal plants, and their maintenance and operation, as it may deem proper for its purposes; and it shall be the duty of the county, district authority, municipality, corporation, company, institution, or individual interrogated to furnish such information and records.

273. *State board of health to issue orders to improve unsatisfactory systems.*—When the State board of health finds, upon investigation, that any water supply or sewerage system, or refuse-disposal works, on account of incompetent supervision or inefficient operation, is not producing such results, from a sanitary standpoint, as might reasonably be expected, or is in any way a menace to health or comfort or is creating a nuisance, it shall issue an order to the proper officer, board, department, or person having charge of or owning such system or plant, to secure such operating results as might be reasonably expected, which results shall be, and shall be produced within such time as shall be satisfactory to the State board of health. If the desired results be not produced within the time specified, the State board of health may order the proper officer, board, department, or person having charge of or owning such system, or plant, to appoint, within such time as it may specify, and pay the salary of, a competent person, to be approved by the State board of health, who shall take charge of and operate such system or plant, so as to secure the results demanded by the board.

274. *State board of health may require alterations, extension, etc., of unsatisfactory systems.*—When the State board of health finds, upon investigation, that any water supply or sewerage system, or refuse-disposal works, is in any way a menace to health or comfort, or is creating a nuisance, and conditions can not be sufficiently improved, in the opinion of the board, by mere change in the method of operation, the State board of health shall be empowered to issue an order requiring the owner of the system or plant to make such alterations or extensions to the system or plant, or to install such new system or plant, as the board may determine necessary to correct improper conditions. The State board of health shall name in its order such date for the completion of the work as it may deem reasonable and proper.

275. State board of health may require installation of new systems where water is polluted.—When the State board of health finds, upon investigation, that any of the waters of the State are being, or are liable to become, polluted in a way dangerous to health, or so as to be in any way a nuisance, and such condition is due to the fact that there is no or only a partial system of public water supply, sewerage, or refuse disposal in a certain county, municipality, district, subdivision, or locality; or in case absence or incompleteness of a public system of water supply, sewerage, or refuse disposal in any county, municipality, district, subdivision, or locality is, in the opinion of the State board of health, sufficiently prejudicial to the health or comfort of that or any other county, municipality, district, subdivision, or locality, then the State board of health, may issue an order to the effect that a public system of water supply, sewerage, or refuse disposal shall be installed and put into operation, or the existing system completed in that county, municipality, district, subdivision, or locality within a specified time; or the board may order the installation of such devices or the institution of such methods and enforce such measures or regulations as it may deem proper under the circumstances.

276. Permits required for construction or alteration of water or sewerage systems.—After April 16, 1914, the State, a county, municipality, district, corporation, company, institution, or person shall not install a system of water supply, sewerage, or refuse disposal for public use, nor materially alter or extend any such existing system without having received a written permit from the State board of health so to do; nor shall any permit for this purpose be issued until complete plans and specifications for the installation, alteration, or extension, together with such information as the State board of health may require, have been submitted and approved by the board. All construction shall take place in accordance with the approved plans. In case it shall become necessary or desirable to make material changes in plans or specifications, together with a statement of the reasons for the alteration, shall be submitted to the State board of health, and no material changes shall be embodied in the actual construction until they are approved by the board and a permit issued therefor. After completion of the work a certified copy of the plans in full, showing the work as built, shall be filed with the State board of health for permanent record. The State board of health shall be empowered to make and enforce such rules and regulations regarding the submission of plans for approval and record as it may deem reasonable and proper. Before plans are drawn or application filed for a prospective system of water supply, sewerage, or refuse disposal, a preliminary statement concerning the improvement may be made to the State board of health, whereupon the State board of health shall, if requested, outline the general requirements of the case conformity with which would meet with the board's approval. Whenever application shall be made to the State board of health for a permit under the provisions of this section, it shall be the duty of the board to examine the application without delay, and, as soon as possible thereafter, to issue said permit, disapprove the application, or state the conditions under which said permit will be granted.

278. Plans for water and sewerage systems required before subdivided land is placed on market.—Before land platted for subdivision is put upon the market by any corporation, company, persons, or person, and before any permanent building is erected thereon, there shall be filed with the State board of health a plat of such subdivision, together with a statement as to the methods proposed for supplying the subdivision with water and sewerage service, and such other information as may be required by the board. The State board of health may thereupon order the preparation and submission of such plans and specifica-

tions, within a specified time, as it may deem necessary for furnishing adequate water supply and sewerage service to said subdivision; and it may at any time order the installation, within a specified period in accordance with the plans presented or approved revisions thereof, of the whole or any part of the water supply and sewerage systems for said subdivision as the public health may, in its judgment, require.

279. *State board of health to prevent pollution from industrial wastes.*—Whenever the State board of health shall find that any of the waters of the State are polluted by wastes from any manufacturing or industrial establishment, in such a way as to be or to be liable to become a menace to the public health or comfort, or whenever the existing method of waste disposal in a manufacturing or industrial establishment is found to be or be liable to become in any way a menace to health or comfort, the State board of health shall issue an order requiring the owner of such establishment to cease pollution of the body of water into which the waste is discharged, or to make such alterations in the method of disposing of said waste, as the board may deem necessary to protect the public health and comfort; and said order shall be complied with within such time as the State board of health shall determine. Plans for all such changes in the method of disposing of trades wastes shall be submitted to the State board of health for approval, and all construction shall be carried out in conformity therewith. If the State board of health shall approve the plans submitted, it shall issue a permit for the use of the method proposed for taking care of the waste, and no revised method for taking care of said waste shall be put into effect without such permit. The owner of any manufacturing or industrial establishment shall submit to the State board of health, on demand, all plans, information, and records regarding the existing methods used for the disposal of wastes at that establishment.

280. *Condemning sources of water or ice supplies.*—Whenever the State board of health shall find that the water or ice from any public or private source of water or ice supply is or is likely to become dangerous to health, or that the discharge of sewage or the method of disposal of sewage or refuse from any system or plant, public or private, is, or is likely to become, prejudicial to health or comfort, it shall order that said source of water or ice supply shall be closed, or said point of sewage discharge, or method of disposal of sewage or refuse, abandoned; or the board may order that such works or devices shall be installed, or such measures instituted, as shall be sufficient to remedy existing conditions, if in its judgment such conditions can be remedied in a practical manner by said works, devices, or measures. In case a public or private system of water supply, sewerage, or refuse disposal is condemned by the State board of health, the board may order such arrangements made by the owner of said system or plant as will effectually prevent its operation. The State board of health shall specify such date for compliance with any order provided for in this section as it may deem reasonable and proper.

281. *State board of health may order the abandonment of privies, etc.*—Whenever a system of water supply or sewerage, serving the public, is directly available to any property upon which there exists a spring, well, cesspool, privy, sink drain, or private sewage-disposal plant, which is, or may become, prejudicial to health, the State board of health may order said property to be connected with the water supply or sewerage system, and the spring, well, cesspool, privy, sink drain, or private sewage-disposal plant abandoned and left in such a way that it can not be again used nor become injurious to health. The State board of health shall be empowered to prevent the construction of any proposed well, cesspool, privy, sink drain, or private sewage-disposal plant

whenever or wherever it may deem that the proposed construction would be prejudicial to health. After April 16, 1914, no privy shall be built within the State of Maryland, except it be of such construction as will effectually prevent any contact of fecal matter with the soil and also access to such matter by flies. The State board of health shall be the judge as to whether or not any privy is built in conformity with this rule, and if it shall find that the regulation has not been strictly complied with, it shall condemn the structure and shall order that such changes be made as will be sufficient for compliance with this provision.

282. *State board of health to have control over sources of potable waters to be sold in containers.*—The State board of health shall have supervision and control over the surroundings of any source from which either surface or underground water, for potable purposes, is collected for delivery in containers; and it shall also assume jurisdiction over the method of collecting, bottling, and delivering such waters. After April 16, 1914, no such waters shall be collected, bottled, or delivered until a written permit so to do has been issued by the State board of health to the owner of such supply. No such permit will be issued if the State board of health determines that said water is in any way injurious to the public health. Corporations, companies, and persons handling potable waters shipped from points outside of the State of Maryland, shall receive permits to sell waters only upon presentation to the State board of health of a permit, issued by the State board of health of the State from which the water is collected, stating that the source of such water supply and the method of handling the water, as practiced within the limits of that State, are such as not to be prejudicial to the public health, and that said water is allowed to be sold within the limits of the State issuing said permit. Nothing herein provided shall, however, prevent the State board of health from prohibiting the use of such water shipped from another State if, in its judgment, said water is shown by analysis to be unfit for potable purposes or if its quality in any way is injured by such handling as may be accorded to it after arriving within this State.

283. *Permit required for new sources of ice supplies, etc.*—After April 16, 1914, no new source of ice supply, either natural or artificial, shall be used for furnishing ice to the public for domestic purposes unless such source be approved by the State board of health and a written permit issued by the board for the harvesting or manufacture and the sale of ice from said source. No ice shall be stored in an unclean place, handled in an unclean manner, nor brought into contact with polluted water. The State board of health shall be empowered to make and enforce such rules and regulations as it may deem proper regarding the selection and care of sources of ice supply and the methods employed in harvesting, manufacturing, storing, and handling ice.

284. *Records to be kept by local health authorities.*—All such records as may be required by the State board of health shall be kept by counties, municipalities, districts, corporations, companies, and persons supplying water, ice, sewerage, or refuse-disposal service to the public; by corporations, companies, and persons owning manufacturing and industrial establishments; and by owners of private systems of water supply and sewerage; and the State board of health shall be supplied at all times with all records and information, upon demand. Agents of the State board of health shall be allowed entry to all buildings, structures, and premises owned by counties, municipalities, districts, corporations, companies, and persons supplying the public with water, ice, sewerage, or refuse-disposal service, or upon all private properties, for the purpose of collecting samples, records, and information and ascertaining

whether the rules, regulations, and orders of the State board of health are obeyed.

285. *Permits revocable by State board of health, etc.*—Every permit issued by the State board of health under this subtitle shall be revocable or subject to modification and change by the State board of health, after due notice of which contemplated action has been given by the board to the recipient of such permit. When the length of time that a permit is to run is specified in such permit, said permit shall become automatically inoperative at the expiration of the period of time prescribed, without notice to that effect having been given by the State board of health.

286. *Appeal from State board of health's decisions.*—Any county, municipality, legally constituted water, sewerage, or sanitary district, corporation, company, institution, or person dissatisfied with any order or regulation of the State board of health under the provisions of this subtitle, may commence, within 10 days after the service of such order or regulation, any action in the circuit court for any county or before any judge of the supreme bench of Baltimore city, in any court of Baltimore city of appropriate jurisdiction against the State board of health as defendant, to vacate and set aside any such order or regulation on the ground that such order or regulation is unlawful or unreasonable, or that said order is not necessary for the protection of the public health or comfort, in which action a copy of the complaint shall be served with the summons. The answer of the State board of health shall be filed within 10 days, whereupon said cause shall be at issue and stand ready for trial upon 15 days' notice to either party. All such actions shall have precedence over any civil cause of a different nature, except appeals from an order of the public-service commission, and the said courts shall always be deemed open for trial thereof, and the same shall be tried and determined as other civil actions. Either party to said action, within 20 days after service of a copy of the order or judgment of any court of Baltimore city or of the circuit court of any county, may appeal to the Court of Appeals of Maryland.

287. *Penalty for noncompliance with State board of health orders.*—If any county, municipality, water, sewerage, or sanitary district, corporation, company, or institution, or officer thereof upon whom the duty to act is cast, or any person shall fail to comply with any order of the State board of health before the expiration of the time specified for compliance with said order, or in case of appeal or appeals, for a period of 10 days after final judgment affirming the board's order shall have been entered, to obey said order or in good faith to begin to obey the same; such county, municipality, district, corporation, company, or institution, or officer thereof, or person so failing shall become liable for and forfeit to the State of Maryland a sum of not less than \$10 nor more than \$500, with an extra fine of not less than \$5 nor more than \$50 per day for each day beyond the time limit that said order is not complied with. All penalties are to be recovered by the State in civil action brought by the State of Maryland, and such penalty when collected shall be paid into the State treasury.

288. *Employment of force to carry out act.*—The State board of health shall be empowered to employ and fix the compensation of such experts, engineers, clerical, and other assistants as it may deem necessary to carry out the provisions of this subtitle: *Provided, however,* That all the expenses, for salaries or otherwise, incurred under the provisions of this subtitle shall not exceed in the aggregate the amount appropriated by this subtitle.

[ACTS OF 1916, CHAP. 313.]

Section 1. Creating "Washington Suburban Sanitary District."—All that part of Prince Georges and Montgomery Counties within the following bounds—within the bounds as described on the drawing entitled "State of Maryland, Montgomery and Prince Georges Counties Sewerage Commission, Proposed Washington Suburban Sanitary District, Main Drainage Systems," Plate 1, and dated January, 1914, on file in the office of the State department of health of Maryland, being those sections of Montgomery and Prince Georges Counties adjacent to the District of Columbia and comprising all of the drainage areas of Little Falls Branch and Oxon Run, and all of the territory drainage to Rock Creek, south of a point one-half mile north of the bridge spanning Rock Creek on the road running northeast from Garrett Park, and all of the territory draining to the Anacostia River and its tributaries south of the confluence of Indian Creek and Beaverdam Creek, south of the confluence of Paint Branch and Little Paint Branch, and south of a point one-half mile north of the road crossing Northwest Branch at Burnt Mills, be, and the same is hereby, incorporated for the purposes hereinafter set forth, to be known as "The Washington Suburban Sanitary District."

Sec. 2. Commission to be appointed.—The investigations for and design of water supply, sewerage, and drainage systems in said district shall be under the jurisdiction of a commission of three members, one to be appointed by the county commissioners of Prince Georges County, and one to be appointed by the county commissioners of Montgomery County, both upon the recommendation of the State board of health, on or before June 15, 1916, and the third to be appointed by the governor June 15, 1916. The appointees of the respective county commissioners shall be residents and taxpayers of said sanitary district, and all shall serve for two years. * * *

Sec. 3. Commission to design water supply, drainage, and sewerage systems.—As soon after organization as possible said commission shall proceed to cause the required surveys to be made and to divide the said sanitary district into water, sewerage, and drainage districts, and to designate the same, in the case of sewerage or drainage districts following the natural drainage areas, or parts thereof, as near as may be. They shall thereupon proceed to have field investigations, studies, plans, plans, diagrams, estimates, and specifications made for the water supply, sewerage, and drainage of all such districts, and shall determine the approximate cost thereof for each district.

Sec. 4. Commission to report to 1918 legislature.—Said commission shall present to the legislature of 1918 a detailed report covering its activities, and shall prepare and submit to the legislature a bill setting forth the best means of proceeding with the construction and operation of the water supply, sewerage, and drainage systems proposed for the sanitary district.

Sec. 5. Commission to explain to public needs as to water supply, etc.—Said commission shall be charged with the duty of explaining to the public the advantage and necessity of constructing comprehensive water supply, sewerage, and drainage systems within the sanitary district, and shall hold public hearings whenever they deem it necessary for the discussion of the legislation to be proposed, as provided under section 4.

Sec. 6. Commission may negotiate with proper authorities of District of Columbia.—Said commission shall have full power and authority to negotiate with the proper authorities of the District of Columbia with regard to the connection of the proposed sewers of the counties with those of the District of Columbia,

or vice versa, or with regard to any other matter necessary for the proper construction or operation of the water and sewer systems by them designed.

Sec. 10. *Act not meant to restrict control of State board of health.*—Nothing herein provided shall be taken as restricting any control which the State board of health is empowered by law to exercise within the sanitary district.

Sec. 12. *Mount Rainier not affected by act.*—Nothing herein contained shall affect the town of Mount Rainier, Md., nor the property included within the limits of said town, nor its municipal corporation, known as the mayor and common council of Mount Rainier, nor the provisions of chapter 94 of the Acts of Assembly of 1916, providing for sewerage and water system for said town.

[ENFORCEMENT OF FOOD AND DRUGS ACT. REG. BD. OF H., REVISED TO NOV. 8, 1912.]

Regulation No. 15.—*Oysters.*—Oysters to which ice or water has been added will be deemed adulterated, and oysters, clams, or other shellfish taken from unsanitary or polluted beds, or packed under unsanitary conditions will be considered adulterated in that they contain an added poisonous or other deleterious ingredient. * * *

MASSACHUSETTS.

[REVISED LAWS, 1902, CHAP. 25.]

14. *Town may aid in building system of sewers in its watershed.*—A town may make contracts for the exercise of its corporate powers and for the following purposes:

* * * To contribute to the cost of building, by any other city or town situated in the watershed of its water supply, a sewer or system of sewers to aid in protecting such water supply from pollution.

[REVISED LAWS, 1902, CHAP. 26.]

18. *Inspection of ice.*—A city may establish ordinances to secure the inspection of ice sold within its limits and to prevent the sale of impure ice, and may affix penalties of not more than \$20 for each violation thereof.

[REVISED LAWS, 1902, SUPPLEMENT, 1908, CHAP. 75.]

50. *State department of health may issue orders to preserve purity of ice.*—The State board of health,¹ upon complaint in writing of not less than 25 consumers of ice cut from any pond or stream and sold or held for sale, alleging that said ice is impure and injurious to health, after notice to the parties interested of the time and place appointed for the hearing, and after hearing said parties, may make such orders relative to the sale of said ice as in its judgment the public health requires.

60. *How orders are to be served and enforced.*—Such orders shall be served upon any person who sells or offers for sale impure ice, and may be enforced in equity by the supreme judicial court or the superior court.

61. *Appeal from orders.*—A person who is aggrieved by such orders may appeal therefrom in the manner prescribed by section 95, and shall be subject to the provisions of sections 96 and 97, and the court may award costs in its discretion.

95. *How appeal must be made.*—Whoever is aggrieved by an order passed under the provisions of section 91 or 100² may, within three days after the serv-

¹ Changed to department of health by acts of 1914, chap. 702.

² As these sections do not relate to stream pollution, they are not quoted.

fee of the order upon him, give written notice of appeal to the board and file a petition for a jury in the superior court in the county in which the premises affected are located, and, after notice to the board, may have a trial at the bar of the court in the same manner as other civil cases are tried by jury. If, by mistake of law or fact or by accident, he fails within said three days to apply as aforesaid, and if it appears to the court that such failure was caused by such mistake or accident, and that he has not, since the service of such order upon him, violated it, he may within 30 days after the service of the order upon him apply for a jury.

106. *Trade not to be exercised during appeal.*—Such trade or employment shall not be exercised contrary to the order while such proceedings are pending, unless specially authorized by said board, and if so specially authorized all further proceedings by said board shall be stayed while such proceedings are pending. Upon any violation of the order, unless specially authorized as aforesaid, the proceeding shall forthwith be dismissed.

112. *State department of health to have oversight of inland waters, etc.*—The State * * * [department] of health shall have the general oversight and care of all inland waters and of all streams and ponds used by any city, town, or public institution or by any water or ice company in this Commonwealth as sources of water supply, and of all springs, streams, and water courses tributary thereto. It shall be provided with maps, plans, and documents suitable for such purposes and shall keep records of all its transactions relative thereto.

113 (as amended by chap. 467 of the Laws of 1907). *State department to have inland waters examined and to make rules to prevent pollution.*—Said * * * [department] may cause examinations of such waters to be made to ascertain their purity and fitness for domestic use or their liability to impair the interests of the public or of persons lawfully using them or to imperil the public health. It may make rules and regulations to prevent the pollution and to secure the sanitary protection of all such waters as are used as sources of water supply. Said * * * [department] may delegate the granting and withholding of any permit required by such rules or regulations to State boards and commissions and to selectmen in towns and to boards of health, water boards, and water commissioners in cities and towns to be exercised by such selectmen, boards, and commissions, subject to such recommendation and direction as shall be given from time to time by the State * * * [department] of health; and upon complaint of any person interested said board shall investigate the granting or withholding of any such permit and make such orders relative thereto as it may deem necessary for the protection of the public health.

114. *Publication of order to be evidence of notice.*—The publication of an order, rule, or regulation made by the * * * [department] under the provisions of the preceding section or section 113 in a newspaper of the city or town in which such order, rule, or regulation is to take effect or, if no newspaper is published in such city or town, the posting of a copy of such order, rule, or regulation in a public place in such city or town shall be legal notice to all persons, and an affidavit of such publication or posting by the person causing such notice to be published or posted, filed, and recorded with a copy of the notice in the office of the clerk of such city or town shall be admitted as evidence of the time at which and the place and manner in which the notice was given.

115. *State board to report to general court.*—Said * * * [department] shall annually, on or before the 10th day of January, make a report to the

general court of its doings for the preceding year, recommend measures for the prevention of the pollution of such waters and for the removal of polluting substances in order to protect and develop the rights and property of the Commonwealth therein and to protect the public health and recommend any legislation or plans for systems of main sewers necessary for the preservation of the public health and for the purification and prevention of pollution of the ponds, streams, and inland waters of the Commonwealth. It shall also give notice to the attorney general of any violation of law relative to the pollution of water supplies and inland waters.

116. *State board may appoint employees.*—Said * * * [department] may appoint, employ, and fix the compensation of such agents, clerks, servants, engineers, and expert assistants as it considers necessary. Such agents and servants shall cause the provisions of law relative to the pollution of water supply and of the rules and regulations of said board to be enforced.

117. *State board to consult with local authorities.*—Said * * * [department] shall consult with and advise the authorities of cities and towns and persons having, or about to have, systems of water supply, drainage, or sewerage as to the most appropriate source of water supply, and the best method of assuring its purity or as to the best method of disposing of their drainage or sewage with reference to the existing and future needs of other cities, towns, or persons which may be affected thereby. It shall also consult with and advise persons engaged or intending to engage in any manufacturing or other business whose drainage or sewage may tend to pollute any inland water as to the best method of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drainage or sewage. No person shall be required to bear the expense of such consultation, advice, or experiments. Cities, towns, and persons shall submit to said board for its advice their proposed system of water supply or of the disposal of drainage or sewage, and all petitions to the general court for authority to introduce a system of water supply, drainage, or sewerage shall be accompanied by a copy of the recommendation and advice of said board thereon. In this section the term "drainage" means rainfall, surface and subsoil water only, and "sewage" means domestic and manufacturing filth and refuse.

118. *State board to issue orders to prevent pollution of streams.*—Upon petition to said * * * [department] by the mayor of a city or the selectmen of a town, the managing board or officer of any public institution, or by a board of water commissioners, or the president of a water or ice company, stating that manure, excrement, garbage, sewage, or any other matter pollutes or tends to pollute the waters of any stream, pond, spring, or watercourse used by such city, town, institution or company as a source of water supply, the * * * [department] shall appoint a time and place within the county where the nuisance or pollution is alleged to exist for a hearing, and after notice thereof to parties interested and a hearing, if in its judgment the public health so requires, shall, by an order served upon the party causing or permitting such pollution, prohibit the deposit, keeping, or discharge of any such cause of pollution, and shall order him to desist therefrom and to remove any such cause of pollution; but the board shall not prohibit the cultivation and use of the soil in the ordinary methods of agriculture if no human excrement is used thereon. Said * * * [department] shall not prohibit the use of any structure which was in existence on the 11th day of June in the year 1897 upon a complaint made by the board of water commissioners of any city or town or by any water or ice company unless such board of water commissioners or company files with the State * * * [department] a vote of its city council, selectmen, or company, respectively, that such city, town, or com-

pany will at its own expense make such changes in said structure or its location as said board shall deem expedient. Such vote shall be binding on such city, town, or company. All damages caused by such changes shall be paid by such city, town, or company; and if the parties can not agree thereon, the damages shall, on petition of either party, filed within one year after such changes are made, be assessed by a jury in the superior court for the county where such structure is located.

119. *Appeal from preceding order.*—Whoever is aggrieved by an order passed under the provisions of the preceding section may appeal therefrom in the manner provided in sections 95 and 97; but such notice as the court shall order shall also be given to the board of water commissioners and mayor of the city or chairman of the selectmen of the town or president or other officer of the water or ice company interested in such order. While the appeal is pending the order of the board shall be complied with, unless otherwise authorized by the * * * [department].

120. *Court jurisdiction.*—The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of the State * * * [department] of health, or of any party interested, to enforce its orders, or the orders, rules, and regulations of said * * * [department] of health, and to restrain the use or occupation of the premises or such portion thereof as said * * * [department] may specify, on which said material is deposited or kept, or such other cause of pollution exists, until the orders, rules, and regulations of said * * * [department] have been complied with.

121. *Agents of State board may enter premises to carry out above.*—*Compensation.*—The agents and servants of said * * * [department] may enter any building, structure, or premises for the purpose of ascertaining whether sources of pollution or danger to the water supply there exist, and whether the rules, regulations, and orders aforesaid are obeyed. Their compensation for services rendered in connection with proceedings under the provisions of section 118 shall be fixed by the * * * [department] and shall in the first instance be paid by the Commonwealth; but the whole amount so paid shall, at the end of each year be justly and equitably apportioned by the tax commissioner between such cities, towns, or companies, as during said year have instituted said proceedings, and may be recovered in an action by the treasurer and receiver general, with interest from the date of the demand.

122. *Penalty.*—Whoever violates any rule, regulation, or order made under the provisions of section 113 or 118 shall be punished for each offense by a fine of not more than \$500, to the use of the Commonwealth, or by imprisonment for not more than one year, or by both such fine and imprisonment.

123 (as amended by acts of 1910, chapter 550). *Exception to above provisions.*—The provisions of the preceding 11 sections shall not apply to the Connecticut River. The provisions of the preceding five sections and of so much of sections 112 to 117, inclusive, as refers to domestic water supplies, shall not apply to the Merrimack River, nor to so much of the Concord River as lies within the limits of the city of Lowell, nor to springs, streams, ponds, or water-courses over which the metropolitan water and sewerage board has control.

124. *Pollution of streams above intake of water supplies.*—No sewage, drainage, refuse, or polluting matter of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any pond or stream used as a source of ice or water supply by a city, town, public institution, or water company for domestic use, or render it injurious to health, and no human excrement shall be discharged into any such stream or pond, or upon their banks if any filter basin so used is there situated, or into

any feeders of such pond or stream within 20 miles above the point where such supply is taken.

125. *Exception to previous section.*—The provisions of the preceding section shall not destroy or impair rights acquired by legislative grant prior to the 1st day of July in the year 1878, or destroy or impair prescriptive rights of drainage or discharge to the extent to which they lawfully existed on that date; nor shall it be applicable to the Merrimac or Connecticut Rivers, or to so much of the Concord River as lies within the limits of the city of Lowell.

126. *Court jurisdiction.*—The supreme judicial court or the superior court, upon application of the mayor of a city, the selectmen of a town, managing board or officer of a public institution, or a water or ice company interested, shall have jurisdiction in equity to enjoin the violation of the provisions of section 124.

127. *Willful defiling of springs, etc.*—*Penalty.*—Whoever willfully and maliciously defiles or corrupts any spring or other source of water or reservoir, or destroys or injures any pipe, conductor of water, or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year.

128. *Befouling water supplies, etc.*—*Penalty.*—Whoever willfully deposits excrement or foul or decaying matter in water which is used for the purpose of domestic water supply, or upon the shore thereof within 5 rods of the water, shall be punished by a fine of not more than \$50, or by imprisonment for not more than 30 days; and a police officer or constable of a city or town in which such water is wholly or partly situated, acting within the limits of his city or town, and any executive officer or agent of a water board, board of water commissioners, public institution, or water company furnishing water or ice for domestic purposes, acting upon the premises of such board, institution, or company, and not more than 5 rods from the water, may, without a warrant, arrest any person found in the act of violating the provisions of this section, and detain him until a complaint can be made against him therefor. But the provisions of this section shall not interfere with the sewage of a city, town, or public institution, or prevent the enriching of land for agricultural purposes by the owner or occupant thereof.

129. *Prohibiting bathing in city reservoirs, etc.*—Whoever bathes in a pond, stream, or reservoir, the water of which is used for the purpose of domestic water supply for a city or town, shall be punished by a fine of not more than \$10.

(Supplemented by acts of 1908, chapter 539, as follows:)

Bathing in water supplies.—Any police officer or constable of a city or town in which any pond, stream, or reservoir used for the purpose of domestic water supply is wholly or partly situated, acting within the limits of his city or town, and any executive officer of a water board, board of water commissioners, public institution, or water company, furnishing water for domestic purposes, or agent of such water board, board of water commissioners, public institution, or water company, duly authorized in writing therefor by such boards, institution, or company, acting upon the premises of such board, institution, or company and not more than 5 rods from the water, for such supply may, without a warrant, arrest any person found in the act of bathing in a pond, stream, or reservoir, the water of which is used for the purpose aforesaid, and detain him in some convenient place until a complaint can be made against him therefor.

130. *Animals not to be driven on ice of pond or stream used as water supply.*—Whoever, not being engaged in cutting or harvesting ice, or in hauling logs, wood, or lumber, drives any animal on the ice of a pond or stream which is used for the purpose of domestic water supply for a city or town shall be

punished by a fine of not more than \$50 or by imprisonment for not more than 30 days.

141. (Supplemented by acts of 1908, chapter 499:)

SEC. 1 (as amended by acts of 1911, chapter 135). *Cities, etc., may take lands to protect water supply.*—Cities, towns, water supply, and fire districts duly established by legislative authority may, with the consent and approval of the State board of health, given after due notice and a hearing, take, or acquire by purchase or otherwise, and hold any lands, buildings, rights of way, and easements within the watershed of any pond, stream, reservoir, well, or other water used by them as a source of water supply, which said board may deem necessary to protect and preserve the purity of the water supply.

SEC. 2 (as amended by acts of 1911, chapter 135). *Description of lands taken.*—If any lands, buildings, rights of way, or easements are taken under authority hereof, the city, town, water supply, or fire district shall, within 90 days thereafter, file and cause to be recorded in the registry of deeds for the county or district in which the same are situated, a description thereof sufficiently accurate for identification, with a statement of the purpose for which the same are taken, signed by the water commissioners of said city, town, or district. Upon the filing of said description and statement the title in fee simple to the lands, buildings, rights, or easements so taken, shall vest in the city, town, or district. All lands taken, purchased, or otherwise acquired under the provisions of this act shall be under the control of the board of water commissioners of the city, town, or district acquiring the same, who shall manage and improve them in such manner as they shall deem for the best interest of the city, town, or district.

SEC. 3. *Damages.*—Cities, towns, and districts shall pay all damages sustained by any person or corporation by the taking of any lands, buildings, rights, or easements under the authority of this act; and if the parties can not agree upon the amount of the same, they may be recovered in the manner provided by law in the case of land taken for the laying out of highways: *Provided*, That application therefor is made within three years after the said taking.

SEC. 4. *Damages to be paid out of proceeds of bonds.*—All damages to be paid by a city, town, or district by reason of any act done under the authority of this act may be paid out of the proceeds of the sale of any bonds authorized by law to be issued by such city, town, or district for water-supply purposes or from any surplus income of the water works available for the purpose.

SEC. 5 (as amended by acts of 1911, chapter 135). *Valuation of land taken, etc.*—After the actual taking by a city, town, water supply, or fire district of property in another city or town for the purposes of this act, the same may be valued by the assessors of the city or town in which such property is situated on the basis of the average of the assessed value of the land and buildings for the three years preceding the acquisition thereof, the valuation for each year being reduced by all abatements thereon; but any part of such land or buildings from which any revenue in the nature of rent is received shall be subject to taxation, and the city, town, water supply or fire district acquiring such property shall pay to the city or town in which it is situated taxes or sums in lieu of taxes at the rate per thousand of all taxes in such city or town for that year on the valuation so determined. Cases of dispute as to valuations arising under this act shall be governed by the provisions of sections 11 and 12 of chapter 12 of the Revised Laws, and of all amendments thereof now or hereafter made.¹

¹ It does not appear necessary, for the purposes of this compilation, to quote sections referred to.

[REVISED LAWS, 1902, SUPPLEMENT, 1908, CHAP. 78.]

(Supplemented by acts of 1908, chapter 379, as follows:)

30. SEC. 2. *Plans to be approved by State department of health.*—No land other than that so used and appropriated at the time of the passage of this act shall be used for the purpose of burial if it be so situated that surface water or ground drainage therefrom may enter any stream, pond, reservoir, well, filter gallery, or other water used by a city, town, or water company as a source of public water supply, or any tributary of a source so used, or any aqueduct or other works used in connection therewith, until a plan and description of the lands proposed for such use have been submitted to the State * * * [department] of health and approved in writing by said * * * [department].

[REVISED LAWS, 1902, SUPPLEMENT, 1908, CHAP. 91.]

113. *Taking of shellfish from contaminated waters.*—The State * * * [department] of health may examine all complaints which may be brought to its notice relative to the contamination of tidal waters and flats in this commonwealth by sewage or other causes, may determine, as nearly as may be, the bounds of such contamination, and, if necessary, mark such bounds. It may also, in writing, request the commissioners on fisheries and game to prohibit the taking from such contaminated waters and flats of any oysters, clams, quahaugs, and scallops. Upon receipt of such request, said commissioners shall prohibit the taking of such shellfish from such contaminated waters or flats for such period of time as the State * * * [department] of health may prescribe.

(Affected by acts of 1907, chapter 285, as follows:)

SEC. 1. *Boards of health may grant permits to take clams or quahaugs for bait.*—Whenever, upon the request of the State * * * [department] of health, under the provisions of section 113 of chapter 91 of the Revised Laws, the commissioners on fisheries and game have prohibited or may hereafter prohibit the taking from contaminated waters or flats in any city or town of any clams or quahaugs, the board of health of such city or town may grant permits in writing to any person to take from such waters clams or quahaugs to be used for bait only, and in such quantities and upon such conditions as they shall express in their permit.

SEC. 2. *Person holding permit to keep same on his person.*—Any person holding a permit from the board of health of a city or town shall keep in his possession, and on his person, while acting thereunder, any permit obtained by him from said board of health, and shall at all times display the same upon the request of any person authorized to enforce the provisions of this act. Violation of this section shall be punished by a fine of not less than \$10 nor more than \$50, and in addition the permit shall be revoked and shall not thereafter be issued within 12 months.

SEC. 3. *When permit is to be forfeited.*—Any person who violates any of the provisions of such permit shall forfeit the permit and shall be punished by a fine not exceeding \$100, or by imprisonment for a term not exceeding three months, or by both such fine and imprisonment.

SEC. 4 (as amended by acts of 1953, chap. 504). *Penalty for sale of clams from polluted waters.*—Whoever sells, or exchanges, or exposes or offers for sale or exchange, or buys any clams or quahaugs taken from waters proscribed as contaminated and subject to the provisions of section 113 of chapter 91 of the Revised Laws, shall be punished by a fine of not more than \$100, or by im-

prisonment for a term not exceeding three months, or by both such fine and imprisonment.¹

133 (as amended by acts 1913, ch. 439). *Penalty for killing fish with poisons.*—Whoever puts or throws into any waters for the purpose of taking or destroying fish therein any poisonous substance, simple, mixed or compound, * * * shall be punished by a fine not exceeding \$500 or by imprisonment for a term not exceeding one year for each offense: *Provided, however,* That the provisions of this act shall not apply to operations of the Federal Government, of the State Government, or of any municipal Government in this commonwealth * * *.

114. *Penalties.*—Whoever takes any oysters, clams, quahogs, or scallops from tidal waters or flats from which the taking has been prohibited as provided in the preceding section [sec. 113] shall forfeit not less than \$5 nor more than \$10 for the first offense, and not less than \$50 nor more than \$100 for each subsequent offense; but such penalties shall not be incurred until one week after the commissioners on fisheries and game shall have caused notice of such prohibition, with a description, or the bounds, of the tidal waters or flats to which such prohibition applies, to be published in a newspaper published in the town or country in which or adjacent to which the tidal waters or flats to which such prohibition applies are situated.²

[REVISED LAWS, 1902, CHAP. 207.]

28. *Poisoning springs, etc.*—Whoever * * * willfully poisons any spring, well or reservoir of water with such intent [intent to kill or injure another person], shall be punished by imprisonment in the State prison for life or for any term of years.

[REVISED LAWS, 1902, CHAP. 208.]

92. *Injury to ice.*—Whoever, willfully, intentionally and without right or license, cuts, injures, mars or otherwise damages or destroys ice upon waters from which ice is or may be taken as an article of merchandise, whereby the taking thereof is hindered or the value thereof diminished for that purpose, shall be punished by a fine of not more than \$100.

[ACTS OF 1909, CHAP. 319.]

SECTION 1. *Supervision of water companies.*—Upon complaint in writing relative to the service furnished in any city or town or the charges therefor made by any company engaged in the business of supplying water to such city or town or to the inhabitants thereof, signed by the mayor of the city or the selectmen of the town or by 50 customers of the company and filed in the office of the State * * * [department] of health, said * * * [department] shall notify the company by leaving at its office or place of business in such city or town a copy of the complaint and may thereupon, after notice, give a public hearing to the complainant or complainants and to the company, and shall require the company to furnish such information in its possession as may be necessary to determine the matters involved in the complaint, and,

¹ Foregoing act (acts of 1907, chap. 285) was repealed in part by acts of 1911, chap. 410, which established a board of shellfish commissioners for the city of New Bedford and the town of Fairhaven. The repealing section (sec. 10) reads as follows: "Chapter 285 of the acts of the year 1907 is hereby repealed so far as it relates to the flats and waters included within the provisions of this act."

² Sec. 114 apparently repealed in part by sec. 4 of acts of 1907, chap. 285, as amended by acts of 1913, chap. 504. (See above.)

after the hearing, may make such recommendations concerning the reduction, modification, or continuation of such charges for service or concerning improvements in the quality of the service or extensions of the same or concerning other matters in the premises as the board shall deem just and proper. Any such recommendations shall be transmitted in writing by the * * * [department] to the company complained of, and a report of the proceedings and of the result thereof shall be included in the annual report of the * * * [department] together with a statement of the action, if any, taken by the company upon the recommendation.¹

[ACTS OF 1909, CHAP. 433.]

SEC. 1. *Regulating filter beds.*—Cities, towns, persons, firms, or corporations owning or operating filter beds or other works for the treatment or purification of sewage shall provide and maintain works adequate for the treatment of the sewage at all times, and shall operate such works in such manner as will prevent a nuisance therefrom or the discharge or escape of unpurified or imperfectly purified sewage or effluent into any stream, pond, or other water or other objectionable result.

SEC. 2. *Sewer commissioners may make regulations.*—The board of sewer commissioners or other board or officer, having charge of the sewers in cities and towns, shall have authority to make such regulations regarding the use of the sewers as are necessary to prevent the entrance or discharge therein of any substance which may tend to interfere with the flow of sewage or the proper operation of the sewerage system or disposal works.

SEC. 3. *State department of health may order changes in sewage-disposal system.*—The State * * * [department] of health, if convinced, upon examination, that a filter bed or other works for the treatment or purification of sewage causes the pollution of a stream, pond, or other water, or is likely to become a source of nuisance or create objectionable results in its neighborhood by reason of defective construction, inadequate capacity, or negligence or inefficiency in maintenance or operation or from other cause, may issue notice in writing to the city, town, or person owning or operating such works requiring such enlargement or improvement in the works or change in the method of operation thereof as may be necessary for the proper maintenance and operation of the works and the efficient purification and disposal of the sewage. In case the State * * * [department] of health is satisfied after investigation that the unsatisfactory operation of a sewage-disposal system is due wholly or partly to the discharge into the system of manufacturing waste or other substance of such character as to interfere with the efficient operation of said works, said * * * [department] may if necessary prohibit the entrance of such waste or other material or may regulate the entrance thereof into the system, or may require the treatment of such waste or other material in such manner as may be necessary to prevent its interference with the operation of the works.

SEC. 4. *Court jurisdiction.*—The supreme judicial court, or the superior court, shall have jurisdiction in equity to enforce the provisions of this act upon petition of the State board of health or of any party interested.

[ACTS OF 1909, CHAP. 505.]

SEC. 1. *Examination of the sanitary condition of the Merrimac River.*—The State * * * [department] of health shall at such times as it may deem proper

¹ See acts of 1914, chap. 787, two sections of which are quoted in this appendix, p. 252.

examine the bed, banks, and waters of the Merrimac River and of streams tributary or adjacent thereto in any city or town bordering upon said river or streams. Whenever the * * * [department] shall determine that the condition of said river or streams or of the banks thereof is injurious or dangerous to public health, or likely to become injurious or dangerous to public health, by reason of the entrance of sewage or of refuse from factories, or from other causes, said board shall prepare a plan or plans for removing the cause of such injury or danger, and shall report the same to the general court.

[ACTS OF 1910, CHAP. 460.]

SEC. 1. Commissioners on fisheries and game may prohibit discharge of waste materials into certain streams.—If the commissioners on fisheries and game determine that the fisheries of any brook or stream in this Commonwealth may be of sufficient value to warrant the prohibition or regulation of the discharge or escape of sawdust, shavings, garbage, ashes, acids, sewage, dyestuffs, and other waste material from any particular sawmill, manufacturing or mechanical plant, or dwelling house, stable, or other building, which may, directly or indirectly, materially injure such fisheries, they may by an order in writing to the owner or tenant of such sawmill, manufacturing or mechanical plant, dwelling house, stable, or other building prohibit or regulate the discharge or escape of sawdust, shavings, garbage, ashes, acids, sewage, dyestuffs, and other waste material therefrom into such brook or stream. Such order may be revoked or modified by them at any time. Before any such order is made said commissioners shall, after reasonable notice to all parties in interest, give a public hearing in the county where the sawmill, manufacturing or mechanical plant, dwelling house, stable, or other building to be affected by the order is located, at which hearing any citizens shall have the right to be heard on the questions to be determined by the commissioners. Upon petition of the party aggrieved by such order, filed within six months after the date thereof, the superior court, sitting in equity, may, after such notice as it may deem sufficient, hear all interested parties and annul, alter, or affirm the order. If such petition is filed by the party aggrieved by said order within 16 days after the date thereof said order shall not take effect until altered or affirmed as aforesaid. Whoever, having so been notified, discharges sawdust, shavings, garbage, ashes, acids, sewage, dyestuffs, and other waste materials, or suffers or permits it to be discharged or to escape from said plant under his control into a brook or stream in violation of the order of said commissioners or of said court, if an appeal is taken, shall be punished by a fine of not more than \$25 for the first offense and of \$50 for a second offense.

[ACTS OF 1911, CHAP. 655.]

SEC. 1. State department of health authorized to make expenditure to protect public health in valley of Neponset River.—The State * * * [department] of health is hereby authorized and directed to expend a sum not exceeding \$150,000, exclusive of damages to land, easements, and rights in land, in constructing necessary drains, trenches, and ditches, and in dredging and deepening the channel of the Neponset River between the place where the river is crossed by Washington Street in Walpole and tide water, and within said limits to make changes and alterations in any bridge, dam, or other structure over, under, or across said waters, and to do any other work, except as herein-after stated, which will tend to restore the lands along said river to their origi-

nal condition, and to abate malaria and other peril to the public health.¹

[ACTS OF 1914, CHAP. 531.]

SEC. 1. *Pollution of Charles River prohibited.*—The metropolitan park commission is hereby authorized to make rules and regulations to prohibit the pollution of the Charles River within the metropolitan district.

SEC. 2. *Penalty.*—Any person or corporation violating any rule or regulation made under authority hereof shall be punished by a fine not exceeding \$1,000.

[ACTS OF 1914, CHAP. 655.]

SECTION 1. *Entrance or discharge of sewage into Assabet River prohibited.*—The State board of health is hereby authorized and directed to prohibit the entrance or discharge of sewage into any part of the Assabet River or its tributaries and to prohibit the entrance or discharge therein of every other substance which may be injurious to public health or may tend to create a public nuisance.

SEC. 2. *State board of health to suggest means of rendering sewage harmless.*—The board shall consult and advise with the owner of any factory or other establishment, or any municipality discharging any substance into the Assabet River, at his or its request, or of its own motion, as to the best practicable and reasonably available means of rendering the waste or refuse therefrom harmless, and any order or finding by the board shall be prima facie evidence of compliance or noncompliance with the provisions of section 1 of this act.

SEC. 3. *Court jurisdiction.*—The supreme judicial court or any justice thereof, and the superior court or any justice thereof, shall have jurisdiction in equity to enforce the provisions of this act and of any order made by the State board of health in conformity therewith, and to enjoin the entrance or discharge into any part of the Assabet River or its tributaries of sewage or of any other substance which is, or which said board shall have determined may be, injurious to public health or tending to create a public nuisance. Proceedings to enforce any such order or to obtain such an injunction shall be instituted and prosecuted by the attorney general at the relation [sic] of the State board of health.

SEC. 4. Whoever, contrary to any order of the State board of health, permits the entrance or discharge into any part of the Assabet River or its tributaries of sewage or of any other substance injurious to public health or tending to create a public nuisance, shall be punished by a fine not exceeding \$500 for each offense.

[ACTS OF 1914, CHAP. 787.]

SEC. 1. *Water companies to be supervised by gas and electric light commissioners.*—The board of gas and electric light commissioners shall have general supervision of all corporations and companies engaged in the distribution and sale of water in this Commonwealth and occupying the public streets with their mains and pipes for that purpose, and shall make all necessary examinations and inquiries and keep themselves informed as to the compliance by all such corporations and companies with the provisions of law. None of the members of said board shall be in the employ of or own any stock in any water company

¹ As the connection between this matter and pollution of streams is very indirect, it has not seemed necessary to quote the rest of the act (secs. 2-12). For the same reason it has seemed unnecessary to quote acts of 1916, chap. 265, which relates to the same matter.

or be in any way, directly or indirectly, peculiarly interested in the sale of water or of any article or commodity used for any purpose connected with the distribution and sale of water.

Sec. 12. *Repeal.*—Chapter 319 of the acts of the year 1900, and sections 20, 21, 22, 23, 24, 27, 28, 30, and 31 of chapter 100 of the revised laws are hereby repealed so far as they apply to the corporations and companies described in section 1 of this act. Nothing herein contained shall be construed to affect or impair the powers and duties of the State board of health with respect to water supply under the provisions of chapter 75 of the revised laws and all acts in amendment thereof and addition thereto.¹

[ACTS OF 1914, CHAP. 792.]

SECTION 1. *Department of health created.*—There is hereby created a State department of health, which shall exercise all the powers and perform the duties now conferred and imposed by law upon the State board of health. The State department of health shall consist of a commissioner of health and a public health council. There shall also be directors of divisions, district health officers, and other employees as hereinafter provided.

Sec. 2. *Duties of commissioner.*—* * * The commissioner of health shall be the administrative head of the State department of health. His powers and duties shall be to administer the laws relative to health and sanitation and the regulations of the department; to prepare rules and regulations for the consideration of the public health council * * *.

Sec. 3. *Regulations of public health council.*—* * * It shall be the duty of the public health council to make and promulgate rules and regulations.
* * *

[ACTS OF 1916, CHAP. 180.]

Section 1 of chapter 541 of the acts of the year 1902, as amended by section 1 of chapter 390 of the acts of the year 1906,² is hereby further amended by striking out the said section and inserting in place thereof the following:

SECTION 1. *Sewage and waste—Prevention of discharge or entrance into Neponset River.*—The State department of health is hereby authorized and directed to prohibit the entrance or discharge of sewage into any part of the Neponset River or its tributaries and to prevent the entrance or discharge therein of any other substance which may be injurious to the public health or may tend to create a public nuisance or to obstruct the flow of water, including all waste or refuse from any factory or other establishment where persons are employed, unless the owner thereof shall use the best practicable and reasonably available means to render such waste or refuse harmless.

MICHIGAN.

[HOWELL'S MICHIGAN STATUTES, 1912-13.]

3982. *Appointment of medical inspectors.*—The State board of health is hereby authorized and empowered, whenever it becomes necessary to promote the work of the State board of health, to appoint any one of its members a State medical

¹ See acts of 1909, chap. 319, above.

² Amending law is given in full because acts of 1902, chap. 541, and acts of 1906, chap. 390, are not included in Supplement to Revised Code.

³ At the end of each section is given the section number in the Compiled Laws of 1897, or the date of the act, if passed since 1897.

Inspector, to the end that the rules and regulations adopted by said board for the preservation of public health may be strictly enforced in the various parts of the State. Any member of the board selected or appointed as a medical inspector, or any other person the board may so designate to act as a medical inspector, shall have the same right of inspection and the same authority in regard to all matters affecting the public health as has been or may be conferred upon the State or local boards of health. * * * (Act No. 293 of 1909.)

3083. *Duties of medical inspector.*—Every person selected to act as medical inspector shall act under the direction of the State board of health and shall make a thorough and complete investigation of all nuisances, * * * water supplies, the sewerage-disposal systems, * * * and such other work as is found necessary to improve the general sanitary and hygienic condition of the State. (Act No. 293 of 1909.)

3084. *Report.*—It shall be the duty of any person acting as such medical inspector after the completion of any investigation to immediately report in writing to the State board of health, upon such forms and in such manner as may be prescribed, a complete account of the essential facts disclosed by the investigation, together with the recommendations made and the work done to better safeguard the public health. (Act No. 293 of 1909.)

3178. *Regarding pollution of certain waters.*—It shall be unlawful for any person or persons to willfully or in any other manner knowingly to defoul, pollute, contaminate in any manner so as to render said water offensive for drinking purposes the waters of that stream situated in the townships of Adrian, Rome, and Cambridge, Lenawee County, Mich., and known commonly as Wolf Creek, or any tributary thereof situated in said county, at any place in said stream above the dam from which the water supply of the city of Adrian is taken. (Act No. 80 of 1899.)

3179. *What is meant by polluting waters referred to in section 3178.*—Whoever mischievously, maliciously, or willfully puts any dead animal, carcass or part thereof, or any other putrid, nauseous, noisome, or offensive substance in said stream or its tributaries, or in any other manner defouls the waters of said stream or its tributaries in an unwholesome or offensive manner, or shall drain the contents of any barnyard, waste-factory products, or other unwholesome substance into the water of said stream or its tributaries shall be deemed guilty of a violation of this act. (Act No. 80 of 1899.)

3180. *Penalty for violation.*—Any person convicted of a violation of this act [secs. 3178-3180] shall be punished by a fine not exceeding \$100 and not less than \$5 and costs of prosecution, and in default of the payment of said fine and costs he shall be imprisoned in the jail of Lenawee County not less than 10 nor more than 60 days, or both such fine and imprisonment in the discretion of the court. (Act No. 80 of 1899.)

4441. *Prohibiting pollution of waters where fish are taken.*—It shall be unlawful for all persons to put into any of the waters of this State, where fish are taken, any offal, blood, putrid brine, putrid fish, or filth of any description, and any person so offending shall be fined in any sum not exceeding \$300 or imprisonment not exceeding 30 days, or both, at the discretion of the court: *Provided, however,* That this act shall not be construed to apply to discharging the waste matter of any paper mill into any of the streams or their tributaries on sections 13, 23, and 24 of Schoolcraft Township, Kalamazoo County. (Compiled Laws, sec. 5854, as amended by act No. 333, 1907.)

4442. *Burning of refuse accruing from curing of fish.*—All fish, offal, or filth of any description whatsoever accruing from the catching and curing of fish

shall be burned or buried 10 rods distant from the beach or shore of the river or lake. (Compiled Laws, sec. 5855.)

4444. *Prohibiting putting of stone, sand, bark, sawdust, etc., in certain waters.*—It shall be unlawful for any person or persons to put into any of the waters fronting or bordering land where fish are taken by the legal owner or occupant of such lands any vessel or ship ballast, stone, sand, coal, cluder, ashes, log slabs, decayed wood, bark, sawdust, or obstruction, or filth of any other description * * *. (Compiled Laws, sec. 5857.)

4445. *Penalties.*—Any person or persons offending against the provisions of section 10 of this act [sec. 4444] shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to a fine not exceeding \$100 or imprisonment in the county jail not more than 90 days, or both such fine and imprisonment, in the discretion of the court; * * *. (Compiled Laws, sec. 5858.)

4674. *Unlawful to use substance to stupefy fish.*—It shall not be lawful hereafter at any time to kill or destroy, or attempt to kill or destroy, any fish in any of the waters of the State of Michigan * * * by the use of Indian cockle or other substance or device which has a tendency to stupefy the fish. (Compiled Laws, sec. 5863.)

5020. *Powers of city in regard to pollution of streams.*—Every city incorporated under the provisions of this act shall * * * have the general powers and authority in this chapter mentioned; and the council may pass such ordinances in relation thereto and for the exercise of the same as they may deem proper, namely:

Twenty-third. To provide for clearing the rivers, ponds, canals, and streams of the city, and the races connected therewith, of all driftwood and noxious matter; to prohibit and prevent the depositing therein of any filth or other matter tending to render the waters thereof impure, unwholesome, and offensive. (Compiled Laws, sec. 3107.)

5068. *City councils may preserve purity of water supplies.*—The council [of any city] shall have authority to provide by ordinance for the preservation of the purity of the waters of any harbor, river, or other waters within the city and within one-half of a mile from the corporate boundaries thereof; to prohibit and punish the casting or depositing therein of any filth, logs, floating matter, or any injurious thing; * * *. (Compiled Laws, sec. 3146.)

6025. *Village councils may preserve purity of water supplies.*—The council [of any village] shall have authority to provide by ordinance for the preservation of the purity of the waters of any harbor, river, or other waters within the village, * * *. (Compiled Laws, sec. 2806.)

7825. *Use of streams for washing ores.*—Whenever any mining corporation shall erect and maintain, or has heretofore erected and still maintains, any stamp mill for the purpose of stamping, breaking, or crushing any ores or rock containing copper, iron, silver, or any other mineral, or any of the ores thereof, and which shall require the use of water for the purpose of washing, separating, cleansing, or purifying the same, such corporation shall have the right to use for that purpose any stream or body of water which flows upon or across the lands owned or occupied by such corporation: *Provided*, That nothing herein contained shall be construed as exempting any such corporation from liability to any person or corporation for any damages that may be sustained by reason of the use of any stream or body of water for the purposes aforesaid. (Compiled Laws, sec. 7109.)

7826. *Injunction to prevent use of such water prohibited.*—No injunction shall issue for the purpose of enjoining or restraining any corporation from using the water in any stream or body of water in the manner and for the

purposes contemplated by this act [secs. 7825-7826]: *Provided*, That the provisions of this section shall not apply to any insolvent corporation, but if any injunction shall be issued against any such insolvent corporation engaged in the business contemplated by this act, the same shall be dissolved upon the giving such bond as the court may direct and approve, conditioned for the payment of any judgment that may be obtained at law against it for any damages arising from the use of such stream or body of water. (Compiled Laws, sec. 7110.)

§4549. *Prohibiting poisoning of water supplies.*—If any person shall * * * willfully poison any spring, well, or reservoir of water with such intent [to kill or injure any other person], he shall be punished by imprisonment in the State prison for life, or any term of years. (Compiled Laws, sec. 11496.)

14851. *Penalty for putting dead animals into streams, etc.*—If any person or persons shall put any dead animal or part of the carcass of any dead animal into any lake, river, creek, pond, * * * every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a sum not less than \$5 nor more than \$10, together with the costs of prosecution, and in default in the payment thereof shall be imprisoned in the county jail of the county in which such conviction may be had, not exceeding 10 days, to be imposed by any court of competent jurisdiction * * *. (Compiled Laws, sec. 11432.)

[Act No. 98 of 1913.]

SECTION 1. State board of health to have supervision over water and sewage-disposal systems.—The State board of health is hereby given supervisory and visitatorial power and control as limited in this act over all corporations, both municipal and private, partnerships, and individuals engaged in furnishing water to the public for household or drinking purposes, and over the plants and systems owned or operated by such municipal or private corporations, partnerships, or individuals. The word "corporation," as hereinafter used in this act, shall be taken to mean and include municipal corporations as well as private corporations.

Sec. 2. State board to have authority to inspect pumping plants, etc.—The State board of health, its agents and representatives, shall have the power and authority to enter upon, at all reasonable times, the pumping plants, filtering plants, reservoirs, standpipes, cribs, and other property of such corporations, partnerships, or individuals for the purpose of inspecting the same and carrying out the authority vested in them by this act.

Sec. 3. State board to make regulations.—The State board of health shall have authority to make and enforce such rules and regulations as it may deem necessary governing and providing a method of conducting and operating the entire or any part of the systems of waterworks, including the filtration plants owned or operated by such corporations, partnerships, or individuals, and may make and enforce penalties for the noncompliance with such rules and regulations; and said board shall, in addition to the other powers vested in it, whenever it shall deem it necessary for the protection of health, have authority to direct such corporations, partnerships, or individuals operating waterworks systems to cleanse any portion of such systems as it may deem necessary and to operate the same in such manner as to furnish pure and wholesome water and to enforce such directions by rule or regulations.

Sec. 4. State board to investigate complaints made by certain authorities.—Whenever the mayor of a city, president of a village, supervisor of a township, health officer, or representative of the State board of health has reason to be-

Heve that the water furnished by any corporation, partnership, or individual is contaminated, then it shall be the duty of the State board of health, upon the request of such officer, to investigate the same and to determine by laboratory analysis the condition of said water, and the certificate of the State bacteriologist, showing result of such analysis, shall be prima facie evidence of the matters stated in such certificate and also as to the source of the water and the time and place of taking, and of all matters that may be stated in said certificate.

SEC. 5. *Locality to pay for expenses of such investigation.*—The expenses of the investigation and analysis made by the State board of health shall be borne by the locality and shall be paid for at the rate of \$5 per day and necessary traveling expenses while making such investigation and analysis, and shall constitute a charge against the city, village, or township asking for such investigation, the said per diem to be covered into the State treasury to the credit of the State board of health laboratory fund in addition to the amount already appropriated.

SEC. 6. *Copy of plans for water and sewage-disposal systems to be filed with State board of health.*—It shall be the duty of the mayor of each city, the president of each village, and of all private corporations, partnerships, or individuals now or hereafter operating waterworks systems in this State, to file with the State board of health a true and correct copy of the plans and specifications of the entire system owned or operated by such corporation, partnership, or individual, including such filtration or other purification plant as may be operated by them in connection therewith, and also plans and specifications of all alterations, additions, or improvements to such systems which may be made from time to time. The plans and specifications herein referred to shall, in addition to all other things, show all the sources through or from which water is or may be at any time pumped or otherwise permitted or caused to enter into such system. Such plans and specifications shall be certified by the mayor and city engineer of city corporations, by the president and engineer, if one is employed, for village corporations, and by such proper officer and the engineer employed by a private corporation for private corporations, and by some individual member of a partnership, or by the individual owner in case of waterworks owned and operated by partnerships or individuals, including the engineer employed, if any. If within 60 days after this act shall take effect, or within 60 days after any corporation, partnership, or individual shall commence to operate, or within 60 days after any alterations, additions, or improvements shall be made by such corporation, partnership or individual, and municipal officer or other person whose duty it is to file the same under the provisions of this act, shall willfully fail to file a copy of the plans and specifications as provided herein, or shall knowingly file false or incomplete copies of such plans and specifications, such officer or person shall be deemed guilty of a misdemeanor and shall be subject to a fine of not less than \$25 and not more than \$100, or to imprisonment in the county jail not more than 30 days, or to both such fine and imprisonment, and in addition thereto shall be subject to a penalty of \$25 for each and every day such person or officer shall fail or neglect to file such plans and specifications, which penalty may be collected in any court of competent jurisdiction on the complaint of any member of the State board of health, and it shall be the duty of the attorney general to prosecute such complaint, and any penalties recovered shall be deposited in the general fund of the State.

SEC. 7. *Definition.*—The words "plans and specifications" as used in this act shall be construed to mean a true description or representation of the entire systems operated by such corporation, partnership, or individual as the same

shall be actually in use at the time of filing the same, and also a full and fair statement of how the same is operated: *Provided*, That any corporation, partnership, or individual that has already filed with the State board of health such plans and specifications as are required by section 6 of this act shall not be required to file such plans and specifications.

SEC. 8. *Annual reports required of plants having beds, etc., to be cleansed.*—In case of corporations, partnerships, or individuals operating filtration plants in which there are beds or other appliances to be cleansed, it shall be the duty of such corporations, partnerships, or individuals to file with the State board of health an annual report under oath on or before the 1st of January in each year, showing the dates on which and the number of times such beds or appliances were cleansed during the preceding year. Such report shall be sworn to by any municipal officer or person acquainted with the facts and employed by such corporation, partnership, or individual at the time of making said report. In the case of a municipal corporation, it shall be the duty of the clerk thereof to prepare and forward such report. Any person making a false statement in such annual report shall be deemed guilty of and subject to the penalty of perjury.

SEC. 9. *Violation of act a misdemeanor unless otherwise provided.*—Any corporation other than municipal, any partnership company or individual, or any officer of any municipal corporation having the duty imposed upon him by this act, who shall violate any provision of this act where no other penalty is provided therein, shall be guilty of a misdemeanor and shall be punished therefor as provided by law.

SEC. 10. *State board to inspect water supplies and make recommendations.*—It shall be the duty of the State board of health, on receipt of the plans and specifications of such waterworks systems, to inspect the same with reference to their effect upon the public health, and if such board on such inspection finds that the public water supply of any such city or village is impure and dangerous to individuals or to the public generally, the said board on its order may require the corporation, partnership, or individual owning and operating the same to make such alterations in such waterworks systems as may be required or advisable in the opinion of said board, in order that the water supply may be healthful and free of pollution. Such recommendations or orders of the State board of health shall be served in writing upon such corporations, partnerships, or individuals, and it shall thereupon be the duty of such corporations, partnerships, or individuals to comply with such recommendations or orders.

SEC. 11. The State board of health shall have the same power of visitation, inspection, direction, and control over the sewage-disposal systems of the cities and villages of this State as is herein given with respect to the waterworks systems. The mayor of each city and the president of each village shall file with the secretary of the State board of health, on or before the 1st day of January, 1914, a true and correct description of the entire sewage system owned by the municipality. It shall be the duty of the State board of health, on receipt of such plans and specifications, to inspect the same with reference to their effect upon the public health, and if such board on such inspection finds that such sewage systems or any parts thereof are dangerous to individuals, or to the public health generally, the said board on its order may require such alterations in such systems as may be required or advisable in the opinion of such board: *Provided*, That nothing herein contained shall be construed to grant any power to prevent any municipality now disposing of its sewage into any river from continuing so to do. Such recommendations or orders shall be served in writing upon the clerk of the city or village, and thereupon it shall be the duty of such

city or village to make such alterations, changes, or additions to its sewage system as shall have been so recommended or ordered by said board. Such orders may be reviewed or enforced by any court of chancery or other court having jurisdiction.

Sec. 12. State board to employ sanitary engineer.—The State board of health is hereby authorized and empowered to employ a sanitary engineer, who shall be known by the title of State sanitary engineer, who shall give his full time, under the direction of the State board of health, to the visitation, inspection, and investigation of the waterworks systems, sewage-disposal systems, garbage-disposal systems in the cities and villages of this State, and to such other matters as the State board of health may direct. He shall be paid a salary of a sum not to exceed \$3,000 per annum, and his expenses for travelling and clerk hire, under the direction of the State board of health, to be paid out of the general fund of the State, the same to be audited as provided by law on the approval of the secretary of the State board of health. He shall at all times be subject to the orders of and removal by the State board of health.

MINNESOTA.

[GENERAL STATUTES, 1913.]

1268. Village council to prevent fouling of waters.—The village council shall * * * have power to adopt, amend, or repeal all such ordinances, rules, and by laws as it shall deem expedient for the following purposes: * * * (17) Board of health, etc.; To establish a board of health, with all the powers of such boards under the general laws; * * * to provide for the cleaning and removal of obstructions from any river, stream, lake, slough, or water-course within the village; and to prevent the obstruction or retarding of the flow of waters therein, or the fouling of the same.

1545. City council to prevent contamination of waters.—The city council shall have power and it shall be its duty after the construction of such works [waterworks] to maintain the same and to prevent injury or obstruction to the channel or works and contamination of the waters. And for such purposes the city council may enact suitable ordinances and prescribe penalties for their violation, not exceeding a fine of \$100 for each offense, or confinement in the city workhouse not exceeding 90 days. The municipal court of the city shall have jurisdiction of such offenses.

4640. State board of health to enforce regulations to prevent pollution of streams.—The board [State board of health] may adopt, alter, and enforce reasonable regulations of permanent application throughout the whole or any portion of the State, or for specified periods in parts thereof, for the preservation of the public health. Upon the approval of the attorney general and the due publication thereof, such regulations shall have the force of law, except in so far as they may conflict with a statute or with the charter or ordinances of a city of the first class upon the same subject. In and by the same the board may control, by requiring the taking out of licenses or permits, or by other appropriate means, any of the following matters: * * * (5) The pollution of streams and other waters, and the distribution of water by private persons for drinking or domestic use.

4670. Pollution of water.—No sewage or other matter that will impair the healthfulness of water shall be deposited where it will fall or drain into any pond or stream used as a source of water supply for domestic use. The State board of health shall have general charge of all springs, wells, ponds, and streams so used, and shall take all necessary and proper steps to preserve

the same from such pollution as may endanger the public health. In case of violation of any of the provisions of this section the State board may, with or without a hearing, order any person to desist from causing such pollution and to comply with such direction of the board as it may deem proper and expedient in the premises. Such order shall be served forthwith upon the person found to have violated such provisions.

4671. *Appeal to district court.*—Within five days after service of such order, any person aggrieved thereby may appeal to the district court of the county on which such polluted source of water supply is situated; and such appeal shall be taken, prosecuted, and determined in the same manner as provided in section 4668. During the pendency of such appeal, the pollution against which the order has been issued shall not be continued, and upon violation of such order the appeal shall forthwith be dismissed.

4773. *Sawdust deposits.*—Any person who deposits any sawdust or other refuse in any streams or water wherein the commission [State game and fish commission] has deposited fish fry, or may deposit any such fry, or where any brook trout naturally abound, shall be deemed guilty of a misdemeanor.

4805. *Poisoning water supplies to kill fish.*—No person shall lay, set, use, or prepare any drug, poison, lime, medicated bait, nets, fish berries, * * * or any other deleterious substance whatever, * * * in any of the waters in this State with intent to thereby or therewith catch, take, or kill any fish.

8482. *Punishment of misdemeanors when not fixed by statute.*—Whoever is convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence shall be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than \$100.

8483. *Punishment of gross misdemeanor when not fixed by statute.*—Whoever shall be convicted of a gross misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than \$1,000.

8782. *Throwing offal, dead bodies, etc., into streams.*—Every person * * * who shall deposit or cast into any lake, creek, or river wholly or partly in the State, or shall deposit upon the ice of any such lake, creek, or river, the offal from, or the dead body of, any animal, shall be guilty of a gross misdemeanor, and punished by a fine of not less than \$100, or imprisonment in the county jail for not less than three nor more than six months.

8787. *Waterworks must not be in filthy condition.*—Every owner, agent, manager, operator, or anyone having charge of any waterworks furnishing water for public or private use who knowingly permits the appliances of the same to become in a filthy condition, or in such condition that the purity and healthfulness of the water supplied by reason thereof becomes impaired, shall be guilty of a felony, and punished by imprisonment in the State prison for not more than 10 years.

9007. *Poisoning water supplies.*—* * * every person who shall willfully poison any spring, well, or reservoir of water, shall be punished by imprisonment in the State prison for not more than 10 years, or by a fine of not more than \$500, or by both.

MISSISSIPPI.

[Code of 1906.]

1329. *Poisoning water supplies to kill fish.*—Every person who shall poison any fish by mingling in the water any substance calculated and intended to

stupefy or destroy fish shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than \$5 or imprisoned in the county jail not less than 10 days, or both.

1231. *Poisoning water supplies with intent to injure.*—Every person * * * who shall willfully poison any well, spring, or reservoir of water, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding 10 years, or in the county jail not exceeding one year, or by fine not exceeding \$1,000, or both.

1307. *Pollution of public-water supplies.*— * * * If any person shall pollute any such waters [navigable waters] by putting therein the carcass of any dead animal, or any refuse or foul matter, or any matter or thing calculated to render the water thereof less fit for drink, or the sustenance of fish, the person so offending, in either case, shall be guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not more than \$50 or by imprisonment in the county jail not more than 30 days, or both. But this section shall not be so construed as to prevent any city or town in this State from constructing sewers so as to empty into any navigable streams of water of this State.

2480. *Regulations of State board of health.*—The State board of health is authorized to make and publish all reasonable rules and regulations necessary to enable it to discharge its duties and powers and to carry out the purposes and objects of its creation, and reasonable sanitary rules and regulations to be enforced in the several counties by the county health officer under the supervision and control of the State board of health.

3286. *Befouling water supplies with wood working refuse.*—The owners of mills, factories, gins and the like shall not throw any sawdust or other refuse in the watercourse, or leave the same where it might run or be carried into any lake, pond, or watercourse by the rains or high water, and thus injure the water for use and sustenance of fish. And every such owner, his agents and servants, so offending, by omission or commission, shall be liable to any person damaged thereby; and every person who is entitled to fishing privilege in any such water so injured shall be entitled to damages.

[PRIVIES, CESSPOOLS, AND PUBLIC TOILETS. REG. BD. OF H., JUNE 2, 1913.]

SEC. 3. No privy shall be maintained in any room, nor shall it have direct connection with any room wherein any kind of exposed food or foodstuff is stored, prepared, or handled.

SEC. 4. All privies located in or near public buildings such as courthouses, depots, hotels, and schoolhouses must be well lighted and ventilated and kept in a sanitary condition at all times.

SEC. 5. No insanitary privy shall be maintained by any person near to a dairy, meat market, bakery, grocery store, or other place where food is stored, prepared, or handled. This has reference to such food as can be contaminated.

SEC. 6. No person shall misuse or abuse any public toilet of any depot, schoolhouse, hotel, or other public building or railway coach, either by writing upon the walls or by interfering with the plumbing of said toilets by throwing therein trash of any kind or otherwise.

[PRIVY VAULTS AND CESSPOOLS. REG. BD. OF H., AUG. 17, 1914.]

SECTION 1. No privy pit, cesspool, or reservoir into which any privy, water-closet, stable, sink, or other receptacle of refuse or sewerage is drained shall be constructed or maintained in any situation or in any manner whereby, through leak or overflow of its contents, it may cause pollution of any well, spring, or

other source of water used for drinking or culinary purposes; nor shall the overflow from any such reservoir or receptacle be permitted to discharge into any public place or in anywise whereby danger to health may be caused. And every such pit, reservoir, or receptacle shall be cleaned and the contents thereof removed at such times and under such precautions as the State board of health may prescribe. * * *

Sec. 3. No person, firm, or corporation shall own, maintain, or rent any privy in any incorporated or unincorporated city, town, or village, unless the same shall be so constructed as to prevent the soil from contamination; * * *.

Sec. 14. No privy, vault, water-closet, cesspool, stable drain, or sink shall open into any ditch, stream, or drain, except into the public sewers of any city or into disposal tanks properly designed for such purpose.

Sec. 15. All sewer drains leading out to vaults or disposal plants shall be of standard construction, and no sewer drain or outlet from any sewage-disposal plant shall empty into any lake, pond, creek, stream, or open field unless all possible provision is made to prevent the contamination of any water supply. Nor shall any such drain or outlet be allowed to become obnoxious or dangerous to public health.

Sec. 16. No pit privy shall be constructed within 200 feet of a well or spring. Furthermore, it shall always be located so that the drainage from the privy will be away from the water supply and in such a position as to avoid overflow of its contents either by seepage water or surface drainage.

Sec. 17. No pit closet shall be constructed wherever there is a gravel bed or a distinctly limestone formation permitting free circulation of underground water, but such a closet can be used wherever there is a compact soil.

Sec. 19. No abandoned well or deep well shall be used for sewage disposal or a receptacle for household waste.

MISSOURI.

[REVISED STATUTES, 1909.]

4486. *Prohibiting poisoning water supplies.*—Every person * * * who shall willfully poison any spring, well, or reservoir of water shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years.

4615. *Prohibiting pollution of school water supplies.*—Every person * * * who shall in any manner pollute the water contained in any well, cistern, or reservoir [connected with any building used for schoolhouse or church purposes] shall be deemed guilty of a misdemeanor.

4795. *Disposal of carcasses.*—If any person or persons shall put any dead animal, carcass, or part thereof, the offal, or any other filth into any well, spring, brook, branch, creek, pond, or lake, every person so offending shall, on conviction thereof, be fined in any sum not less than \$10 nor more than \$100. If any person shall remove or cause to be removed and placed * * * in any of the streams or watercourses other than the Missouri or Mississippi River any dead animal, carcass, or part thereof, or other nuisance to the annoyance of the citizens of this State, or any of them, every person so offending shall, upon conviction thereof, be fined for every such offense any sum not less than \$10 nor more than \$50, and if such nuisance be not removed within three days thereafter, it shall be deemed a second offense against the provisions of this section.

4796. *Prohibiting poisoning water supplies.*—Whoever willfully or maliciously poisons, defiles, or in any way corrupts the water of a well, spring, brook, or

reservoir used for domestic or municipal purposes * * * shall be adjudged guilty of a misdemeanor and punished by a fine not less than \$50 nor more than \$500, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, and shall be liable to the party injured for three times the actual damage sustained, to be recovered by suit at law.

6536 (as amended by Laws, 1915, p. 292). *Prohibiting deposition in water-courses of materials harmful to fish.*—It shall be unlawful for any person or persons, firm, or corporation to cause any dyestuff, coal tar, oil, sawdust, poison, or deleterious substances to be thrown, run, or drained into any of the waters of this State in quantities sufficient to injure, stupefy, or kill fish which may inhabit the same at or below the point where any such substances are discharged or caused to flow or be thrown into such waters: *Provided*, That it shall not be any violation of this section for any person, firm, or corporation engaged in any mining industry to cause any water handled or used in any branch of such industry to be discharged on the surface of the land where such industry or branch thereof is being carried on under such precautionary measures as shall be approved by the State game and fish commissioner. Any person or persons, firm, or corporation offending against any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$200 nor more than \$500 for each offense.

6538 (as amended by Laws of 1915, p. 293). *Poison not to be used to kill fish.*—No person shall place or use in any of the waters of this State any medical drug, any cocculus indicus, or fish berry, or any other poisonous thing or substance calculated to poison, kill, or injure any fish, nor shall by such means kill, catch, or take any fish that may be in said waters * * *. Any person who shall violate any of the provisions of this section shall on conviction be adjudged guilty of a felony and punished by imprisonment in the penitentiary for a term not exceeding two years, or by imprisonment in the county jail not less than 30 days, or by fine not less than \$100, or by both such fine and imprisonment.

6563. *Certain articles forfeited to State.*—The unlawful use of any articles contrary to the provisions of the game and fish law shall forfeit the same to the State, and upon their being found by law under any of the conditions prohibited by this article [secs. 6536 and 6538 are included in the article] shall be destroyed.

8890¹ (as amended by Laws, 1917, p. 365). Every city of the second class [cities with 30,000 and less than 100,000 inhabitants] shall have power by ordinance not inconsistent with the constitution or any law of this State or of this article [art. 84, Rev. Stats., 1909, as amended]. Thirty-sixth. To provide water, etc.: To provide the city and its inhabitants with water; to prevent the water supply of the city from becoming polluted or contaminated, and for this purpose such city shall have jurisdiction as far beyond the limits as is necessary.

9559. *Cities may inspect sources of water sold to public, etc.*—All cities in this State have power and authority to regulate and license and to levy and collect license tax on all springs, wells, or other sources of water supply from which water is sold to the public or offered or shipped for sale and to inspect the same and analyze such waters.

9560. *Cities may protect water supplies.*—Such cities shall have the power and authority by ordinance to provide for the protection of all springs, wells,

¹ This section number of the Revised Statutes, 1909, is not given in the law of 1917 here referred to, which repeals sec. 8890, among others, and enacts new legislation in its place; but it has seemed more convenient to retain the section number for this compilation.

or other sources of water supply described in section 9559 from contamination or danger of contamination.

MONTANA.

[REVISED CODES OF 1907, SUPPLEMENT OF 1915.]

1477. *Power of State board of health to make and enforce regulations.*—The State board of health shall have power to promulgate and enforce such rules and regulations for the better preservation of the public health in contagious and epidemic diseases as it shall deem necessary, and also regarding the causes and prevention of diseases, and their development and spread; and if any person or corporation refuses, after notice in writing from the secretary of the State board of health, or from any local or county board of health, of such rules and regulations, to comply therewith, within a reasonable time, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum not less than \$10 nor more than \$100, with costs of prosecution; and it shall be the duty of the secretary of the State board of health to prepare and distribute to local boards of health, physicians, and other persons requesting them, such printed circulars as the board may direct, and such rules and regulations as the board may promulgate as aforesaid. (Revised Codes of 1907.)

1488. *Penalties for failure to comply with orders of State board of health.*—If any person or corporation shall neglect or refuse to comply with any written order of a local, county, or State health officer, made and promulgated by either of them under this act, within a reasonable time, to be designated in the notice, such person or corporation shall be guilty of a misdemeanor. In case of such neglect or refusal to comply with such order, the local, county, or State board of health may cause it to be complied with at the expense of the town, city, or county, and such expenses shall be recovered from the person or corporation whose legal duty it was to comply with such order, by a civil action brought in the name of such town, city, or county. (Revised Codes of 1907.)

1508. *Putting dead animals into streams, etc.*—If any person or persons shall put any dead animal, or part of the carcass of any dead animal into any lake, river, creek, pond, reservoir, * * * or who being the owner shall knowingly permit the same to remain in any of the aforesaid places to the injury of the health, or to the annoyance of the citizens of this State, or any of them, every person so offending shall be guilty of a misdemeanor, and every 24 hours that said person shall permit the same to remain shall be deemed an additional offense under the provisions of this act. (Revised Codes of 1907.)

1509. *Approval of State board of health required for sewer construction.*—Whenever any city, town, or corporation, or person shall hereafter contemplate the construction of any sewer system that will empty into any stream or source of water supply in this State, they shall submit a plan of such proposed system to the State board of health and said board shall cause a thorough investigation to be made, and if after such an investigation they shall determine that such sewerage [sic] will so pollute the waters of any stream or source of water supply as to endanger the health or lives of the citizens of this State, or any of them, they shall submit to the judge of the district court of the district in which such proposed sewerage system is located the evidence on which their findings are based, and if said judge, upon that evidence and such other evidence as the judge may receive on a hearing at which all parties in interest may be heard and present evidence if they desire, shall find that the action of the State board of health is just and unbiased he

¹ Whether the law is taken from the Revised Codes or from the Supplement is indicated in parenthesis at the end of each section.

shall issue an order preventing the construction of such sewerage system except under such conditions as the State board of health may designate.

A city or town may appeal to the district court of the county in which such city or town may be located from any order of the State board of health affecting such city or town at any time within 30 days after the service on the city or town council of such order. Such appeal may be taken by filing notice thereof in such court either before or after serving a copy of such notice on any member of the State board of health. The court may order pleadings to be filed to present the issues and such case shall be tried *de novo* the same as appeal from a justice court. (Supplement of 1915.)

1550. *State board of health to have control of public water supply.*—The State board of health shall have the general oversight and care of all inland waters and of all streams, lakes, and ponds used by any city, town, or public institution or by any water or ice company in this State as sources of water supply for domestic use, and of all springs, streams, and water courses tributary thereto. It shall be provided with maps, plans, and documents suitable for such purposes, and shall keep records of all its transactions relative thereto. (Revised Codes of 1907.)

1560. *Examinations of waters.*—Said State board of health may cause examination of waters to be made to ascertain their purity and fitness for domestic use or their liability to impair the interests of the public or of persons lawfully using them or to imperil the public health. It may make rules and regulations to prevent pollution and to secure the sanitary protection of all such waters as are used for domestic purposes. (Revised Codes of 1907.)

1561. *Publications of orders, rules, and regulations.*—The publication of an order, rule, or regulation made by the State board of health under the provisions of this act [secs. 1550-1572] in a newspaper of the city or town in which such order, rule, or regulation is to take effect, or, if no newspaper is published in such city or town, the posting of a copy of such order, rule, or regulation in a public place in such city or town shall be legal notice to all persons, and an affidavit of such publication or posting by the person causing such notice to be published or posted, filed and recorded, with a copy of the notice, in the office of the clerk of such city or town shall be admitted as evidence of the time at which, and the place and manner in which, the notice was given. (Revised Codes of 1907.)

1562. *Employment of agents and servants.*—Said State board of health may appoint, employ, and fix the compensation of such agents, clerks, servants, engineers and expert assistants as it considers necessary. Such agents and servants shall cause the provisions of law relative to the pollution of water and of the rules and regulations of said board to be enforced. (Revised Codes of 1907.)

1563. *Duties of the board.*—Said board shall consult with and advise the authorities of cities and towns and persons having or about to have systems of water supply, drainage, and sewerage as to the most appropriate source of water supply and the best method of assuring its purity or as to the best method of disposing of their drainage or sewage with reference to the existing and future needs of other cities, towns, or persons which may be affected thereby. It shall also consult with and advise all corporations, companies, or persons engaged or intending to engage in any manufacturing or other business whose drainage or sewage may tend to pollute any inland water as to the best method of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drainage or sewage. Cities, towns, and all other corporations, companies, or persons shall submit to said board for its advice and approval their proposed system of water supply or of the disposal of drainage or sewage, and no city, town, or persons, or company shall proceed

to build or install or enlarge or extend any system of water supply, drainage or sewage disposal, without first obtaining the approval of the State board of health. In this section, the term "drainage" means rainfall, surface, and sub-soil water only, and "sewage" means domestic and manufacturing filth and waste. (Revised Codes of 1907.)

1564 (as amended by acts, 1917, chap. 26). *Prohibiting pollution of water supplies.*—No sewerage [sic], drainage, refuse, or polluting matter, of ¹ such kind and amount as either, of itself or in connection with other matter, will corrupt, pollute, or impair the quality of the water of any spring, pond, lake, or stream used as a source of water or ice supply by a city, town, or Federal, State, or county institution, or water or ice company for domestic use, or render it injurious to health, and no human excrement shall be discharged into any such stream, spring, lake, pond, or upon their banks or into any feeders of such spring, lake, pond, or stream unless such sewerage [sic], drainage, refuse, or polluting matter shall at the discretion of the State board of health have been purified, so as to render it harmless in such a manner and under such conditions and restrictions as the State board of health may direct.

1565. *Protection of watersheds.*—No municipal or other public or private corporation and no company or person shall hereafter construct, build, establish, or operate any railroad, logging road, logging camp, electric plant, or manufacturing plant of any kind upon or over any watershed of any public water supply system, unless such corporation, company, or person shall protect said water supply from pollution by such sanitary precautions as shall be approved by the State board of health, and any such corporation, company, or person intending to construct, build, or establish, or operate any railroad, logging road, logging camp, electric plant, or manufacturing plant of any kind upon the watershed of any public water supply system, shall furnish the State board of health with detailed plans and specifications of the sanitary precautions to be taken, which must be approved by said board. (Revised Codes of 1907.)

1566. *Complaints and investigations.*—Upon complaint to the State board of health of the mayor or health officer of any city or town or the managing board or officer of any public institution or the president of an ice company stating that manure, excrement, garbage, sewage, or any other matter which pollutes or tends to pollute the waters of any lake, pond, spring, stream, or watercourse used by such city or town, public institution or company as a source of water supply, the said board shall cause a thorough investigation to be made of such alleged nuisance or pollution, and if, in its judgment, the public health so requires, shall by order served upon the party causing or permitting such pollution, prohibit the continuance of such pollution and shall order him to remove any such cause of pollution. (Revised Codes of 1907.)

1567. *Agents and servants of boards may enter buildings.*—The agents and servants of said board may enter any building, structure, or premises for the purpose of ascertaining whether sources of pollution or danger to the water supply there exist, and whether the rules, regulations, and orders aforesaid are obeyed. (Revised Codes of 1907.)

1568. *Appeals to the district court from orders of the State board of health.*—Whoever is aggrieved by any order of the State board of health passed under the provisions of this act may appeal therefrom to the district court of the county in which such order shall be effective. But such notice as the court shall order shall also be given to the mayor of the city or town or president of the water company or any other persons interested in such order. While the appeal is pending the order of the State board of health shall be complied with

¹ Text reads "or."

unless otherwise authorized by the State board of health. (Revised Codes of 1907.)

1560. *Jurisdiction of the district court.*—The district court of any county of the State shall have jurisdiction in equity upon the application of the State board of health or any person interested, to enforce its orders or the orders, rules, and regulations of said board of health, and to restrain the use or occupation of the premises or such a portion thereof as said board may specify, on which said material is deposited or kept, or such other cause of pollution exists, until the orders, rules, and regulations of said board have been complied with. (Revised Codes of 1907.)

1570. *Establishment of experimental stations.*—In order that the State board of health may at all times be prepared to give the best advice to cities, towns, public institutions, or private corporations relative to the prevention or removal of pollutions of water, said board is hereby authorized to establish and maintain an experimental station for the purpose of studying the best methods of preventing pollution of water and for the purification of water and for the purification, disinfection, and disposal of sewage and domestic and manufacturing waste so as to prevent pollution of water, and said board is authorized to cause sanitary methods and systems in use outside of the State of Montana to be investigated and studied with a view of ascertaining their fitness for conditions in this State. (Revised Codes of 1907.)

1571. *Biennial reports.*—The State board of health shall biennially make a report to the legislature, through the governor, of its doings for the preceding period, recommending measures for the prevention of the pollution of such waters and for the removal of polluting substances in order to protect and develop the rights and property of the State and municipalities therein and to protect the public health, and recommend any legislation or plans for systems of main sewers necessary for the preservation of the public health and for the purification and prevention of pollution of the ponds, lakes, springs, and inland waters of the State. It shall also give notice to the attorney general of any violation of law relative to the pollution of water supplies and inland waters. (Revised Codes of 1907.)

1572. *Penalties for violation of this act.*—Whoever violates any of the provisions of this act or any rule, regulation, or order of the State Board of health made under the provisions of this act shall be punished for each offense by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment. (Revised Codes of 1907.)

1985. *Deposits of foreign substances in or near streams or lakes.*—No person or corporation operating a sawmill on or near any stream, pond, lake, or river shall hereafter dump, drop, cart, or deposit, or cause to be dumped, dropped, carted, or deposited, sawdust, bark, shavings, oil, ashes, cinders, or debris in or near any such stream, pond, lake, or river, or in such manner or place as will likely result or cause the same to be carried into the waters of any such stream, pond, lake, or river; and any person so doing shall be deemed guilty of a misdemeanor and, upon conviction, punished by a fine of not less than \$50 nor more than \$500, or by imprisonment in the county jail not less than 30 days nor more than six months, or by both such fine and imprisonment.¹ (Supplement of 1915.)

6162. *What is nuisance.*—Anything which is injurious to health or is indecent or offensive to the senses, * * * or unlawfully obstructs the free passage or use in the customary manner of any navigable lake, river, bay, stream, canal, or basin, * * * is a nuisance. (Revised Codes of 1907.)

¹ See secs. 8797 and 8798, which are supplemented by this section.

8411. *Punishment of misdemeanor when not otherwise prescribed.*—Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months or by a fine not exceeding \$500, or both. (Revised Codes of 1907.)

8442. *Willfully poisoning water supplies.*— * * * every person who willfully poisons any well, spring, or reservoir of water is punishable by imprisonment in the State prison for a term not less than one nor more than ten years. (Revised Codes of 1907.)

8484. *Befouling waterheads.*—Every person who puts the carcass of any dead animal or the offal from any slaughter pen, corral, or butcher shop into any river, creek, pond, lake, reservoir, or stream, * * * and every person who puts the carcass of any dead animal or any offal of any kind in or upon the borders of any stream, pond, lake, or reservoir from which water is drawn for the supply of the inhabitants of any city or town in this State, so that the drainage from such carcass or offal may be taken up by or in such stream, pond, lake, or reservoir, or who allows the carcass of any dead animal or any offal of any kind to remain in or upon the borders of any such stream, pond, lake, or reservoir within the boundaries of any land owned or occupied by him, or who keeps any horses, mules, cattle, swine, sheep, or live stock of any kind, penned, corralled or housed on, over, or on the borders of any such stream, pond, lake, or reservoir so that the waters thereof shall become polluted by reason thereof is guilty of a misdemeanor and upon conviction thereof shall be punished as prescribed in section 8485 of this code. (Revised Codes of 1907.)

8485. *Penalty for violation of health laws.*—Every person who willfully violates any of the laws of this State relating to the preservation of the public health is, unless a different punishment is prescribed by this code, punishable by imprisonment in the county jail not exceeding one year or by a fine not exceeding \$1,000, or both. (Revised Codes of 1907.)

8557. *Depositing coal slack in streams.*—All persons owning or having in operation, and all persons who may hereafter own or put in operation in the State of Montana, either in person or by agent, any coal mine on any stream containing fish or water which is used for domestic purposes or for irrigation, are hereby required to so care for any coal slack or other refuse emanating from such coal-mining operation as to prevent the same from mingling with the waters of such streams. (Revised Codes of 1907.)

8558. *Penalty.*—All persons owning or operating, or who may hereafter own or operate any coal mine on any stream containing fish or water which is used for domestic purposes, or for irrigation, who shall dump, cart, or deposit, or cause or suffer to be deposited in such stream any such coal slack or other refuse emanating from such coal-mining operation, shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not less than \$200 nor more than \$500 for each and every offense. (Revised Codes of 1907.)

8790. *Poisoning fish.*—If any person or persons shall use * * * any corrosive or narcotic poison, or other deleterious substance for the purpose of catching, stunning, or killing fish, he shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not less than \$200 nor more than \$500, or by imprisonment in the State prison not less than one year nor more than three years, or both such fine and imprisonment. (Supplement of 1915.)

8797. *Depositing sawdust in streams.*—Every person who operates any saw-mill on or near any stream, who dumps, drops, carts, deposits, or causes to be deposited in any such stream, any sawdust, bark, or debris, coming from

said sawmill, is punishable by a fine not less than \$50 nor more than \$250, or by imprisonment in the county jail not less than 30 days nor more than 90 days, or both such fine and imprisonment, in the discretion of the court.¹ (Revised Codes of 1907.)

8798. *Putting sawdust, chemicals, or debris in streams.*—Every person who operates any sawmill, pulp mill, paper mill, or wood-manufacturing plant on or near any stream, lake, or any body of water connected with any stream or lake, who dumps, drops, carts, deposits, or causes to be deposited in such stream, lake, or body of water connected with any stream or lake, any sawdust, bark, chemicals, refuse, or debris coming from said sawmill, pulp mill, paper mill, or wood-manufacturing plant, is punishable by a fine not exceeding \$500.² (Revised Codes of 1907.)

[SANITARY REGULATIONS FOR CAMPS. REG. NO. OF H., APR. 5, 1915.]

Reg. 15. Hereafter contractors and all other persons who may establish an industrial camp or camps, for the purpose of logging or any like industry, or for the purpose of construction of any road, railroad, or irrigation canal, or other work requiring the maintenance of camps for men engaged in such work, or any other temporary or permanent industrial camp of whatsoever nature, shall report to the State health official concerning the location of such camp or camps, and shall arrange such camp or camps in a manner approved by the State health official so as to maintain good sanitary conditions, and shall at all times keep such camp or camps in a sanitary condition satisfactory to the State health official.

Reg. 29. The use of the toilets provided for the men should be made obligatory, and instant discharge of any employees polluting the soil must be rigidly enforced to make such rules effective.

Reg. 31. The supply of water for the camp should be carefully decided upon, and wherever possible, if the camp is to remain several weeks, it is well to run it in pipes from an absolutely uncontaminated source.

NEBRASKA.

[REVISED STATUTES, 1913.]

2672. *Poisoning fish prohibited.*—Whoever * * * shall place any * * * poisonous or stupefying substance in any water containing fish, shall be fined not less than \$100 nor more than \$500 or be imprisoned in the penitentiary not exceeding one year.

2691. *Confiscation of poison.*—Every * * * poisonous or stupefying substance or device used or intended for use in taking or killing * * * fish in violation of this chapter [sec. 2672], is hereby declared to be a public nuisance and may be abated and summarily destroyed by any person, and it shall be the duty of every such officer authorized to enforce this chapter to seize and summarily destroy the same, and no prosecution or suit shall be maintained for such destruction * * *.

2739. *State board of health regulations.*—The State board of health shall have supervision and control of all matters relating to sanitation and quarantine necessary to the protection of the people of this State from disease arising from insanitary conditions and from contagious, infectious, and epidemic diseases; and it shall be the duty of said State board of health to formulate, adopt, and publish such proper and reasonable general rules and regulations

¹ See sec. 1985, which supplements secs. 8797 and 8798. The three sections overlap.

as will best serve to promote sanitation throughout the State and prevent the introduction or spread of disease. * * * It shall be the duty of all local, municipal and county boards of health, health authorities and officials, officers of State institutions, police officers, sheriffs, constables, and all other officers and employees of the State, or of any county, city, village, or township thereof, and every person to obey and enforce such quarantine and sanitary rules and regulations as may be adopted by the State board of health; and each and every person or officer specified in this section who shall fail, neglect, or refuse to obey or enforce such rules or regulations shall, upon conviction, for each and every such offense, be subject to a fine of not less than \$15 nor more than \$100.

8841. *Putting carcass into springs, etc., used for domestic purposes.*—Whoever shall put any dead animal, carcass, or part thereof, or other filthy substance, into any well or into any spring, brook, or branch of running water, of which use is made for domestic purposes shall be fined in any sum not less than \$2 nor more than \$40.

8842. *Putting carcass or offal into rivers, etc.*—Whoever shall put the carcass of any dead animal, or the offals from any slaughterhouse or butcher's establishment, packing house, or fish house, or any spoiled meats or spoiled fish, or any putrid animal substance, or the contents of any privy vault, upon or into any river, bay, creek, pond, canal * * * shall be fined in any sum not less than \$1 nor more than \$50.

8843. *Nuisance, penalty, definition.*—Whoever shall erect, keep up, or continue and maintain any nuisance, to the injury of any part of the citizens of this State shall be fined in any sum not exceeding \$500, and the court shall, moreover, in case of conviction of such offense, order every such nuisance to be abated or removed. * * * The corrupting or rendering unwholesome or impure any water course, stream, or water * * * shall be deemed nuisances; and every person or persons guilty of erecting, continuing, using, or maintaining, or causing any such nuisances shall be guilty of a violation of this section, and in every such case the offense shall be construed and held to have been committed in any county whose inhabitants are or have been injured or aggrieved thereby.

NEVADA.

[REVISED LAWS, 1912.]

794. *Power of city council to prevent pollution of water supplies.*—The city council shall have the following powers:

39. To construct or authorize the construction of waterworks without the city limits for the supply of said city, and for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works and over all reservoirs, streams, canals, ditches, pipes, flumes, and drains used in or necessary for the construction, maintenance, and operation of the same, and over the stream or source from which the water is taken, above the point from which it is taken, and to enact all ordinances and regulations necessary to carry the power herein conferred into effect.

4716. *County commissioners may institute suit to prevent pollution of streams.*—The board of county commissioners of any county in this State are hereby authorized and empowered to institute and maintain suit in any court of competent jurisdiction against any persons, firms, association, or corporation depositing sawdust in any river or stream the waters of which run partly or wholly in this State.

4717. *Tax may be levied for enforcement of section 4716.*—The boards of county commissioners of any and all counties of this State are hereby authorized and empowered to levy annually such tax as in their discretion may be necessary to carry out the provisions of this act [see, 4716].

4718. *Pollution of streams by sawmills, etc., unlawful.*—It shall be and is hereby declared unlawful for any person or persons being the owner or owners of or being in possession of any sawmill or mills used for the making of lumber, or the owner or owners of any slaughterhouse, brewery, or tannery, to injure or obstruct the natural flow of water in any river, creek, or other stream, or to permit any sawdust, chips, shavings, slabs, offal, refuse, tan bark, or other offensive matter to enter therein so as to damage or corrupt the purity of the water of such stream or streams.

4719. *Action for damages.*—Any city or county government, or any person or persons, being the owner or owners of or in the possession of any agricultural lands, who may be injured by reason of the violation on the part of any person or persons of the provisions contained in the preceding section, shall have the right to commence and maintain an action against such person or persons for any damage sustained, in such manner as may be provided by law.

4720. *Penalty.*—Any person who shall willfully and knowingly violate the provisions of this act [secs. 4718-4720] shall be guilty of a misdemeanor and may be punished by a fine not exceeding \$500.

6285. *Punishment of misdemeanor when not fixed by statute.*—Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for not more than six months, or by a fine of not more than \$500, or by both.

6290. *Misdemeanor by corporations.*—In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable as for a misdemeanor, and there is no other punishment prescribed by law, such corporation is punishable by a fine not exceeding \$500.

6540. *Furnishing impure water a gross misdemeanor.*—Every owner, agent, manager, operator, or other person having charge of any waterworks furnishing water for public or private use, who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity or healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor.

6541. *Penalty for poisoning springs, etc.*— * * * every person who shall willfully poison any spring, well, or reservoir of water shall be punished by imprisonment in the State prison for not less than five years.

6546. *Throwing dead animals or offal into rivers, etc.*—Every person who shall deposit, leave, or keep on or near a highway or route of public travel, on land or water, any unwholesome substance; or who shall establish, maintain, or carry on, upon or near a highway or route of public travel, on land or water, any business, trade, or manufacture which is detrimental to the public health; or who shall deposit or cast into any lake, creek, or river, wholly or partly in this State, the offal from or the dead body of any animal, shall be guilty of a gross misdemeanor.

6561. *Defouling of streams a nuisance.*—A public nuisance is a crime against the order and economy of the State. * * * Every act unlawfully done and every omission to perform a duty, which act or omission * * * (3) shall unlawfully interfere with, defoul * * * a lake, navigable river, bay, stream, canal, ditch, mill race, or basin * * * shall be a public nuisance.

6563. *Maintaining or permitting nuisance.*—Every person who shall commit or maintain a public nuisance for which no special punishment is prescribed,

or who shall willfully omit or refuse to perform any legal duty relating to the removal of such nuisance, and every person who shall let or permit to be used any building or boat or portion thereof knowing that it is intended to be, or is being used for committing or maintaining any such nuisance, shall be guilty of a misdemeanor.

6564. *Abatement of nuisance.*—Any court or magistrate before whom there may be pending any proceeding for a violation of the next preceding section shall, in addition to any fine or other punishment which it may impose for such violation, order such nuisance abated, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant.

[LAWS 1917, CHAP. 49.]

SECTION 1. *Suits to be brought to prevent pollution of streams.*—It shall be the duty of the attorney general, with the consent of the governor, to commence such action or actions, suit or suits, against any and all persons, municipalities, towns, cities, corporations, or associations, as may be necessary to prevent or restrain the pollution of any public stream or streams of the State of Nevada, or any public stream or streams running in, into, or through the State of Nevada, whether the source of pollution be within or without the State of Nevada.

SEC. 2. *Attorney general to institute proceedings.*—The attorney general is authorized, empowered, and directed, with the consent of the governor, to take such proceedings and commence and maintain such action or actions, suit or suits, as may be necessary or proper to prevent or restrain the pollution of any public stream or streams in the State of Nevada, or any public stream or streams running into, in, or through the State of Nevada, and to maintain and prosecute such action or actions, suit or suits, in the name of the State of Nevada, whether the source of pollution be within or without the State of Nevada.

SEC. 3. *Appropriation.*—For the purpose of carrying out the provisions of this act there is hereby appropriated, from the general fund of the State of Nevada, the sum of \$10,000; *Provided, That* not more than \$1,000 of this amount be expended for attorney fees.

SEC. 4. *Appointment of committee of legislature.*—Within 10 days after the passage and approval of this act, the president of the senate shall appoint one member of the senate and the speaker of the assembly shall appoint one member of the assembly, who shall constitute a committee of the legislature for the purposes hereinafter mentioned; they shall continue to exercise the duties of such committee until 10 days after the convening of the next regular session of the legislature, within which 10 days their successors shall be appointed in the same manner and the committee shall be perpetuated indefinitely in the same manner. Any vacancy in the committee which may occur from any cause, including failure of the proper officer to appoint, shall be filled by the governor.

SEC. 5. *Committee to act in advisory capacity.*—The committee hereby created, together with the governor and attorney general, shall constitute an advisory board for the purpose of carrying out this act, which board shall have power to select, employ, and fix the compensation of such legal assistants, experts, chemists, stenographers, and other assistants to the attorney general and to authorize such other expenses as they deem necessary and proper to carry out the provisions of this act.

[LAWS 1917, CHAP. 221.]

SECTION 1. Pollution of streams a misdemeanor.—Any person or persons, firm, company, corporation, or association, city or town who shall deposit, or who shall permit or allow any person or persons in their employ or under their control, management, or direction to deposit in any of the waters of the lakes, rivers, streams, and ditches in or running into or through the State of Nevada, or cause to be washed or infiltrated into any of said waters, or place or deposit where the same may be washed or infiltrated into any of said waters, any sawdust, pulp, oils, rubbish, filth, or poisonous or deleterious substance or substances which affects the health of persons, fish, or live stock, or renders said waters unpalatable or distasteful, shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be fined in a sum not less than \$50, nor more than \$500, exclusive of court costs.

[LAWS OF 1917, CHAP. 239.]

SEC. 12. Unlawful to pollute streams.—Every person who places or allows to pass or who places where it can pass or fall into or upon any of the waters of this State at any time, any lime, gas, tar, cocculus indicus, slag, acids, or other chemical, sawdust, shavings, slabs, edgings, mill or factory refuse, or any substance deleterious to fish, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not less than \$250 nor more than \$500, or by imprisonment in the county jail in the county in which the conviction shall be had for not less than 125 or more than 250 days: *Provided*, That the provisions of this section shall not apply to mills or works for the reduction of ores nor against the owners or operators of such mills or works so far as concerns the owners or operators of such mills or works.¹

NEW HAMPSHIRE.

[REVISED STATUTES OF 1892, CHAP. 108.]

1. Health officers to make regulations.—The health officers of towns may make regulations for the prevention and removal of nuisances, and such other regulations relating to the public health as in their judgment the health and safety of the people require, which shall take effect when approved by the selectmen, recorded by the town clerk, and published in some newspaper printed in the town, or copies thereof have been posted in two or more public places in the town. Any person willfully violating such regulations shall be punished by a fine of \$10 for each offense.

2. State board of health may make regulations for local boards.—The State board of health may make, in addition to the rules and regulations of the health officers of towns, such other rules and regulations, or such amendments to existing rules and regulations, as in their judgment the public good requires, and such rules and regulations shall be enforced by the health officers of towns in the same manner as other health regulations.

13. Penalty for leaving offensive matter near water supply.—If a person shall place, leave, or cause to be placed or left in or near a lake, pond, reservoir, or stream tributary thereto, from which the water supply for domestic purposes of a city, town, or village is taken, in whole or in part, any substance or fluid that may cause the water thereof to become impure or unfit for such

¹ Sec. 2047 of Revised Laws supplanted by this section.

purposes, he shall be fined not exceeding \$20 or be imprisoned not exceeding 30 days, or both.

14. *How offensive matter may be removed.*—The board of health of the town, or the water commissioners having charge of the water supply, or the proprietors thereof, may remove such substance or fluid; and they may recover the expense of removal from the person who placed the same or caused it to be placed in or near the water as aforesaid, in an action on the case.

17. *Analysis of water provided.*—Whenever any well, spring, or other water supply is suspected of being polluted by sewage or other matter dangerous to health, the health officers of the town where it is located may cause an analysis of its water to be made by a competent chemist, without expense to the owner. If the analysis shows the water to be unfit for drinking purposes, they may, with the approval of the State board of health, prohibit its use, and, if it be from a well, may cause the well to be closed. The State board of health shall authorize such investigations whenever deemed necessary for the public good.

[REVISED STATUTES, 1892, CHAP. 120.]

7 (as amended by Laws of 1911, chap. 153). *Filk not to be thrown into harbor.*—If any person shall unload, cast, or throw out of any ship, vessel, or boat, or from shore or wharf, any ballast, rubbish, gravel, earth, dirt, ashes, or filth into the harbor, or river of Placataqua, between the lighthouse at the entrance of said harbor and Dover Point Bridge, so called, up said river, or aid and assist therein, he shall forfeit a sum not more than \$10.

[REVISED STATUTES, 1892, CHAP. 296.]

22. *Malignant injuries to ice.*—If any person shall willfully and maliciously cut, injure, or destroy ice upon any waters within the State from which ice is taken as an article of merchandise, whereby the taking thereof is hindered, or its value diminished for that purpose, he shall be fined not exceeding \$100.

[CHAP. 78, LAWS OF 1895.]

SEC. 1. *Purity of waters used for domestic purposes protected; penalty for defilement; exception.*—Whoever knowingly and willfully poisons, defiles, pollutes, or in any way corrupts the waters or ice of any well, spring, brook, lake, pond, river, or reservoir, used as the source of a public water or ice supply for domestic purposes, or knowingly corrupts the sources of the water of any water company or of any city or town supplying its inhabitants with water, or the tributaries of said sources of supply, in such a manner as to affect the purity of the water or ice so supplied at the point where the water or ice is taken for such domestic use, or puts the carcass of any dead animal or other offensive material into said waters or upon the ice thereof, shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year. The provisions of this section shall not apply to the deposit of any bark, sawdust, or any other waste of any kind arising from the business of cutting, hauling, driving, or storing logs, or the manufacture of lumber; and the use of any stream for the purposes of manufacturing and for the necessary drainage connected therewith, if more than 4 miles distant from the point where the water is taken for such domestic purposes, shall not be deemed a violation of this section.

SEC. 2. *The cutting of ice regulated; powers of supreme court.*—No person shall cut or take ice from any lake, pond, or reservoir used as the source of a public water or ice supply for domestic purposes for man, unless he first shall comply in all respects with such reasonable rules and regulations in regard to

the manner and place of cutting and taking such ice on said lake, pond, or reservoir as may be prescribed by the local board of control or officers of a water company who may have charge of the works of any city or town supplying its inhabitants with water from said lake, pond, or reservoir. The supreme court shall have power to issue injunctions restraining any person from cutting or taking ice from such lakes, ponds, or reservoirs until they have complied with the reasonable regulations made as aforesaid.

Sec. 3. Regulations governing fishing, boating, and horse racing; penalty for violation.—Said local boards and officers may also make all reasonable rules and regulations in regard to fishing and the use of boats in and upon any such lake, pond, or reservoir, and in regard to racing or speeding horses upon the ice thereof, which they may deem expedient. Any person who shall violate any of said rules and regulations after notice thereof shall be fined not exceeding \$20 or imprisoned not exceeding six months.

Sec. 4. Bathing in such waters prohibited; penalty.—If any person shall bathe in such lake, pond, or reservoir within one-fourth of a mile of the point where said water is taken, he shall be fined not exceeding \$20 or imprisoned not exceeding six months.

Sec. 5. Willful injury to property punished.—Whoever shall willfully injure any of the property of any water company or of any city or town used by it in supplying water to its inhabitants shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year; and such person shall also forfeit and pay to such water company, city, or town three times the amount of actual damages sustained, to be recovered in an action on the case.

[CHAP. 85, LAWS OF 1897.]

Sec. 1. Boards of health to inspect sources of domestic ice supply.—It shall be the duty of boards of health of the cities and towns of the State to examine and inspect the sources from which ice is cut, or is proposed to be cut, for domestic use in such cities and towns and to employ such means as may be necessary to determine whether the waters of such sources of ice supply have been polluted or whether ice taken therefrom will be deleterious to the public health.

Sec. 2. If waters found polluted, board to give notice of danger, and that taking must cease.—In each case where the waters of the sources of ice supplies shall be found so polluted that the ice taken therefrom will be unhealthy or unsafe for domestic use, the board of health of the city or town concerned in the same shall immediately notify such person or persons as may have taken, or who propose to take, ice from such polluted source for their own domestic use or for sale for domestic use, of the dangerous character of the waters inspected, and that the taking of such ice for domestic use must cease.

Sec. 3. Punishment for cutting or taking from polluted waters or waters condemned by board.—Whoever knowingly or willfully shall cut or take any ice for domestic purposes from any waters which are polluted with sewage or other substance deleterious or dangerous to life or health, or from waters which a board of health has condemned, shall be fined not exceeding \$250 or imprisoned not exceeding six months.

[CHAP. 87, LAWS OF 1898.]

Sec. 1. Protection of water or ice supply through State board of health.—Whenever any board of water commissioners, local board of health, or 10 or more citizens of any town or city have reason to believe that a public water

or ice supply is being contaminated or is in danger of contamination and that the local regulations are not sufficient or effective to prevent such pollution, they may petition the State board of health to investigate the case and to establish such regulations as the said board may deem necessary for the protection of the said supply against any pollution that in its judgment would endanger the public health.

SEC. 2. Regulations of State board of health.—The State board of health shall, after due investigation, make such regulations as it may deem best to protect the said supply against any dangerous contamination, and the regulations so made shall be in force when a copy is filed with the town clerk and posted in two or more public places in said town or published in some newspaper in the county, and it shall be the duty of the local board of health to enforce said regulations.

SEC. 3. Punishment for violation of such regulations.—Any person violating any regulation established by the State board of health shall be punished by a fine of \$20 for each offense, and a certified copy under oath of such regulation, made by the secretary of the State board of health or by the town clerk, where the regulations are filed, shall be received as *prima facie* evidence of the existence of such regulations in any court of the State.

[CHAP. 72, ACTS OF 1901.]

SEC. 1. Woodworking wastes not to be put water supplies.—All sawmills, planing mills, and other woodworking establishments hereafter constructed and put in operation in this State shall be so constructed and operated that no bark, sawdust, shavings, slabs, edgings, or other waste product therefrom shall escape into or be deposited, dumped, or placed in any lake, pond, or stream within the State, and no bark, sawdust, slabs, edgings, or other waste product from any sawmill, planing mill, or other woodworking establishment hereafter erected and put in operation shall be allowed to escape into or be deposited, dumped, or placed in any such lake, pond, or stream: *Provided, however,* That if the owner or operator of any such establishment has provided it with reasonably perfect modern machinery and appliances to prevent such product or waste from escaping into or being placed in any such lakes, ponds, or streams and keeps said machinery and appliances in reasonable repair he shall not be responsible for any product or waste that may escape from said establishment into said waters without negligence upon the part of himself or his employees: *And provided further,* That this act shall not apply to bark that gets into said waters from logs while being driven, rafted, or stored in said waters and before the process of manufacture begins.

SEC. 2. Petition for relief from operation of this act.—The supreme court, upon petition of any person hereafter desiring to erect a new mill or other establishment mentioned in this act alleging that it will be impracticable for him to profitably do so if obliged to comply with the provisions of this act, and that the public good will be promoted by granting him relief therefrom, upon hearing and satisfactory evidence to sustain the allegations contained in the petition, may grant the petitioner relief from the operation of this act, provided they are of the opinion that in view of all the circumstances justice requires that such relief should be granted and that the public good will be subserved by the granting of such relief.

SEC. 3. Notice to be given interested persons.—Reasonable notice of the petition shall be given to the fish and game commissioners, the selectmen of the town, or mayor of the city in which the establishment is to be erected and to such other persons as may be interested by a notice served on said parties and

a like notice published in a newspaper printed in the town or city or county, and said fish commissioners, selectmen, mayor, or other person interested therein may appear and object to the granting of such relief.

SEC. 4. *Penalty.*—Any person or officer of any corporation violating the provisions of this act shall be fined \$50 for each offense, and every day that they violate the same shall be deemed a separate offense.

[CHAP. 38, LAWS OF 1903.]

SEC. 1. *Board may prohibit domestic use of polluted water; penalty.*—Whenever the State board of health, upon investigation, become satisfied that a well, spring, or other supply of water used for domestic purposes has become polluted so as to endanger the public health they are authorized to prohibit the person or corporation owning or controlling said supply from furnishing such water for domestic purposes until they become satisfied that said water supply has been purified and made fit for domestic use. Any person or corporation official or agent violating the order of the board shall be punished by a fine of not less than \$100 and not exceeding \$1,000 for each and every day they continue to furnish water for domestic purposes after the order of the board has been served upon them.

SEC. 2. *Superior court has jurisdiction to enforce orders.*—The superior court shall have jurisdiction in equity, upon application of the State board of health, to enforce the orders of said board, issued in accordance with the provisions of section 1.

[CHAP. 205, LAWS OF 1913.]

SEC. 1. *Sewage discharge restricted.*—In order to maintain the purity of streams, lakes, and rivers and to prevent further contamination no person, association, or corporation shall hereafter cause or permit the discharge of sewage or other deleterious waste from any factory, hotel, boarding house, or other commercial establishment into any stream, lake, pond, or river not hitherto polluted without first submitting detailed plans of said proposed discharge to the State board of health and securing the approval of the said board.

SEC. 2. *Proposed water systems to be approved.*—No person, association, or corporation proposing to supply water for domestic uses shall construct any new system or enlarge any existing system for supplying water to the citizens of any town or city without first submitting detailed plans of the proposed construction to the State board of health and securing its approval thereof. And it shall be the duty of the said State board of health to examine the topography and the watershed of the proposed supply, and shall also make chemical and bacteriological analyses of the waters of the proposed supply before approval is granted.

SEC. 3 (as amended by chapter 92, laws of 1915).—*State board of health to have supervision over auxiliary or emergency supplies of water, etc.*—No person, corporation, or association supplying water to the public for domestic use shall have resort to, hold in reserve, or maintain a connection through which water may be received from any auxiliary or emergency source of supply the quality of which has not been approved by the State board of health and under regular inspection thereby unless such source shall have been duly declared to and registered by the said board. Every valve, gate, or other device for controlling or preventing the inflow of water of such unapproved character to the public supply-pipe system must be of such construction as to permit of effective sealing or inspection, and such valves, gates, or other devices

shall be kept under or subject to the seal and inspection of the State board of health. Whenever it shall become necessary to break such seal or to resort to an unapproved emergency source, notice thereof within 24 hours shall be conveyed to the said board by telephone or telegraph and also by mail. The State board of health shall have full control and oversight of emergency intakes. It may, when feasible and deemed necessary for the protection of public health, upon reasonable notice require the abandonment of any existent emergency source and the adoption of other means of supply; and if in its judgment the circumstances warrant, it may order the permanent installation and continuous maintenance in connection therewith of some approved form of disinfecting apparatus or equipment. In case said board shall require the abandonment of any such emergency source, the person, corporation, or association aggrieved thereby shall have an appeal to the superior court in term time or vacation, said appeal to be taken within 30 days from the receipt of the order from said board, and said court may make such orders thereon as justice may require.

SEC. 4. (as amended by chapter 92, laws of 1915).—*Penalty.*—Whoever violates any of the provisions of this act or fails to comply with the lawful orders and requirements of the State board of health duly made and provided herein, or whoever hinders or obstructs any inspector in the pursuit of his lawful duty, shall be punished by a fine of not less than \$100 nor more than \$1,000.

[CHAP. 133, LAWS OF 1915.]

SEC. 30. *Poisons for taking fish forbidden.*—No person shall take any fish by the use of any poisonous, stupefying * * * substance. Possession of any such substance by a person on the waters, shore, or islands of this State * * * shall be a violation of the provisions of this section.

SEC. 45. *Use of poisonous substance in private waters forbidden.*—No person shall take fish in any private or artificial ponds prepared or used for the purpose of breeding, growing, or preserving fish, or any stream connected therewith wholly within the control of the person who owns the land around the same, * * * nor place therein any * * * poisonous or stupefying substance * * * without the permission of the owner or lessee of the land upon or through which such waters stand or flow.

[PUBLIC ACTS, 1917, CHAP. 125.]

SECTION 1. *Areas from which ice is being harvested must be marked.*—Hereafter any person or corporation harvesting ice upon any of the public waters of this State shall mark with suitable markers the area from which ice is to be taken at beginning of harvest, and shall maintain such markers as long as any danger exists.

SEC. 2. *Exception.*—This act shall not apply to ponds closed or areas set off by order of the fish and game commission under authority of chapter 74, Laws of 1909, and amendments thereto.

SEC. 3. *Penalty.*—Any person or any agent of any firm, company, or corporation violating the provisions of this act shall be fined \$100 for each offense, or be imprisoned not exceeding 90 days, or both.

[PUBLIC ACTS, 1917, CHAP. 126.]

SECTION 1. *Pollution of Ellis and Wildcat Rivers prohibited.*—It shall be the duty of the local boards of health to inspect the cesspools or other systems of sewage at least once a year, and if any such cesspools or other systems of

sewage be deemed by said boards of health to pollute or contaminate the waters of the Ellis or Wildcat Rivers, or their tributaries, in such manner as to affect their purity for domestic purposes, the said boards of health shall cause the owners of such cesspools or other systems of sewage so deemed to pollute or contaminate said waters to alter or construct the same under the supervision and in accordance with the regulations of the State board of health.

Sec. 2. Penalty.—Whoever violates any of the provisions of this act shall be deemed to be guilty of a misdemeanor, and shall be punished by a fine of not more than \$100, or by imprisonment not exceeding one month.

[POLLUTION OF WALKER POND. REG. BD. OF H., JULY 9, 1914.]

1. No privy, pigpen, stable, or other building or structure in which horses, cattle, swine, or other animals or fowls are kept, shall be built, continued, or maintained within 75 feet of Walker Pond (meaning high-water mark), or within 75 feet of any bay, cove, or inlet thereto, or within 75 feet of any stream tributary to said pond, bays, coves, or inlets, except in such cases as the local board of health may permit, upon the approval of the State board of health, and under such regulations as they may require.

2. No sink water, urine, or water that has been used for washing or cleansing either materials, person, or food shall be allowed to run into said pond, or into any bay, cove, or inlet thereof, or into any stream tributary thereto, or into any excavation or cesspool in the ground or on the surface of any ground within 75 feet of said pond (meaning high-water mark), or of any bay, cove, or inlet, or within 75 feet of any stream tributary thereto, except by consent and under such regulations and conditions as may be given by the local board of health, upon approval of the State board of health.

3. No dead animal, or fish, or parts thereof, or food, or any article perishable or decayable, and no dung, either human or animal, kitchen waste, swill, or garbage shall be thrown into or deposited in said pond, or left or permitted to remain within 75 feet thereof (meaning high-water mark), or into any bay, cove, or inlet of said pond, or into any stream tributary thereto, or within 75 feet of such bay, cove, or inlet, stream, or tributary.

4. No sawdust shall be thrown or be allowed to fall into said pond or into any stream tributary thereto.

5. No person shall bathe in said pond.

6. No matter, waste, or materials such as are described in sections 2, 3, and 4 shall be thrown, deposited, or allowed to remain upon the ice of the waters of said pond, or upon that of any bay, cove, or inlet thereof, or of any stream tributary thereto.

7. It is the duty of the local board of health to enforce the above regulations, and any person violating any regulation established by the State board of health shall be punished by a fine of \$20 for each offense. Any deviations from the above rules must be by written consent of the State board of health.

[WATER SUPPLIES—REGULATIONS FOR THE PROTECTION OF BEAVER LAKE. REG. BD. OF H., JULY 9, 1914.]

1. No sewage of any kind, sink water, or water that has been used in washing or cleansing either materials, person, or food, shall be allowed to run into Beaver Lake, in the town of Derry, or into any stream tributary thereto. All excavations made for cesspools for sewage shall be so located or constructed that their contents will not in any manner pollute the said lake or its tributaries.

2. No privy, plop, cesspool, or place of deposit upon the surface of the ground for sewage, sink water, or water used for cleansing person or material shall be allowed to exist where it may be reached by high water in the event that the said lake or its tributaries overflow their usual channels, or where rain or melting snow would be likely to wash said material into said lake or its tributaries.

3. No dead animal, or parts thereof, or any article perishable or decayable, and no sewage, waste, or garbage shall be deposited so near said lake or its tributaries as to endanger the purity of the water.

4. None of these things, materials, or conditions mentioned in the foregoing regulations, or anything else that might endanger the purity of the said water or ice supply, shall be permitted to exist in such locality or manner as, in the opinion of the board of health, would be liable to contaminate the water or ice of the said lake or its tributaries.

5. It shall be the duty of the board of health to enforce these regulations, which shall take effect and be in force on and after August 1, 1914.

NEW JERSEY.

[COMPILED STATUTES, 1910,¹ CITIES.]

702. *Sewers not to be discharged into streams used for water supply.*—It shall be lawful for any city to expend not more than \$50,000 in one year, \$40,000 in the next succeeding year, and \$30,000 in the third year, for the purpose of constructing sewers in such city: *Provided, however,* That any such sewer shall not be so constructed as to at any time empty or discharge any of its contents into any river, creek, stream, lake, pond, or watercourse, the waters of which are used for or connect with the waters of any river, creek, stream, lake, pond, or watercourse used for the supply of water to any aqueduct, water main, pipe, or reservoir of any city, town, township, or municipality of this State. (Public Laws, 1896, p. 239.)

733. *Construction of sewers or sewer system.*—It shall be lawful for any city in this State to provide for and cause to be constructed sewers and drains, or a system of sewerage and drainage, or either or any of them in the manner herein provided * * *. (Public Laws, 1890, p. 112, as amended by Public Laws, 1894, p. 177.)

785. *Pollution of streams not authorized by act relating to construction of sewers.*—No provision of any act which prohibits the pollution of any of the waters of this State used to supply any aqueduct or reservoir, or which are distributed for public use, is intended to be hereby² repealed, and this act shall not be construed to authorize the discharge of sewage into fresh water in such a manner as to defile a source of public water supply; nor is this act intended, nor shall it be held or construed, to deprive any person of any right of action for injury to person or to property, but any municipality exercising the powers conferred by this act shall, except where herein otherwise expressly provided be and remain liable for injuries resulting to person and to property in the same manner and to the same extent as if such municipality were a private corporation. (Public Laws, 1890, p. 200, as amended by Public Laws, 1890, p. 71.)

¹ In view of the fact that a large number of the laws quoted repeat by implication parts of other laws also quoted, it has seemed advisable to give the date of the law or amendment at the end of each section.

² Sec. 785 is sec. 47 of an act to provide for drainage and sewerage in cities of this State (Public Laws, 1890, p. 192). Sec. 733 is the first section of the same act. Intermediate sections omitted for the purpose of brevity.

790. *Unnavigable watercourse may be used for inclosed sewer if sewage does not flow into tidewater basin.*—In any city of this State, wherein any unnavigable creek or watercourse now exists, into which sewers of said city now empty, it shall be lawful for the official board of such city having the charge and control of sewers in such city * * * to cause to be constructed through such ancient unnavigable creek or watercourse an inclosed sewer * * *; *Provided, however,* That such sewer shall be constructed so as not to empty into any tidewater basin established by or under the authority of this State, into or permit, directly or indirectly, passage thereby of sewage into any tidewater basin established by or under the authority of this State. (Public Laws, 1894, p. 492.)

Preamble (to section 826-829).—Whereas many of the cities of this State are so situated that they are traversed by rivers, streams, or creeks into which such cities drain all or part of their sewage thereby rendering such rivers, streams, or creeks foul, noxious, and detrimental to health: Therefore,

826. *Intercepting sewers: disposal of sewage.*—It shall be lawful for the city council, board of aldermen, or board of body having control of the finances of any city through which any river, stream, or creek runs and into which the sewage or part of the sewage of such city is emptied by such number of votes as may be required by the charter of such city or the rules of the governing body thereof for the expenditure of money for other purposes, to order and cause an intercepting sewer or sewers or a system of sewerage to be built and constructed in such city or any part thereof, and to alter a general system of sewage for such city or any part thereof so that all sewers within the district intended to be drained by such intercepting sewer and now emptying into such river, stream, or creek shall thereafter be connected with such intercepting sewer or sewers into which all sewage matter from such connecting sewers shall thereafter be discharged, and to establish one or more outlets or places of deposit within or without such city for sewerage [sic] and drainage, and to provide for the disposal of such sewage and drainage in such manner as said city council, board of aldermen, or board or body having control of the finances of such city may deem proper. (Public Laws, 1907, p. 257.)

827. *Cleaning watercourse used for receiving sewage.*—It shall be lawful for the city council, board of aldermen, or board or body having the control of the finances of any city aforesaid upon adopting and carrying into effect a plan for an intercepting sewer or general system of sewerage and drainage in accordance with the first section of this act [see. 826] to cause any river, stream, or creek theretofore used for the purpose of receiving the sewage of such city, or any part thereof, to be cleansed and otherwise improved so as to render the same healthful and free from deleterious matter. (Public Laws, 1907, p. 268.)

833. *Throwing articles into stream which is the outlet of natural drainage of city.*—It shall be lawful for the city council, board of aldermen, or other governing body of any city aforesaid [any city in the State] to pass an ordinance or ordinances providing for penalties against persons convicted * * * of throwing or placing any article or thing in said river, stream, or creek [which is an outlet of the natural drainage or storm or surface flow of any city.] (Public Laws, 1907, p. 270.)

844. *Sewage-disposal plants.*—Cities of this State are hereby empowered to establish and maintain suitable plants, works, or stations for the treatment, disposal, or rendering of sewage. It shall be lawful for the municipal board, commission, or body of any city having charge of the sewers therein, to adopt

¹ Secs. 828 and 829 relate to assessments and bond issue and are therefore omitted.

790. *Unnavigable watercourse may be used for inclosed sewer if sewage does not flow into tidewater basin.*—In any city of this State, wherein any unnavigable creek or watercourse now exists, into which sewers of said city now empty, it shall be lawful for the official board of such city having the charge and control of sewers in such city * * * to cause to be constructed through such ancient unnavigable creek or watercourse an inclosed sewer * * *; *Provided, however,* That such sewer shall be constructed so as not to empty into any tidewater basin established by or under the authority of this State, into or permit, directly or indirectly, passage thereby of sewage into any tidewater basin established by or under the authority of this State. (Public Laws, 1894, p. 492.)

Preamble (to section 826-829).—Whereas many of the cities of this State are so situated that they are traversed by rivers, streams, or creeks into which such cities drain all or part of their sewage thereby rendering such rivers, streams, or creeks foul, noxious, and detrimental to health; Therefore,

826. *Intercepting sewers; disposal of sewage.*—It shall be lawful for the city council, board of aldermen, or board of body having control of the finances of any city through which any river, stream, or creek runs and into which the sewage or part of the sewage of such city is emptied by such number of votes as may be required by the charter of such city or the rules of the governing body thereof for the expenditure of money for other purposes, to order and cause an intercepting sewer or sewers or a system of sewerage to be built and constructed in such city or any part thereof, and to alter a general system of sewerage for such city or any part thereof so that all sewers within the district intended to be drained by such intercepting sewer and now emptying into such river, stream, or creek shall thereafter be connected with such intercepting sewer or sewers into which all sewage matter from such connecting sewers shall thereafter be discharged, and to establish one or more outlets or places of deposit within or without such city for sewerage [sic] and drainage, and to provide for the disposal of such sewage and drainage in such manner as said city council, board of aldermen, or board or body having control of the finances of such city may deem proper. (Public Laws, 1907, p. 267.)

827. *Cleansing watercourse used for receiving sewage.*—It shall be lawful for the city council, board of aldermen, or board or body having the control of the finances of any city aforesaid upon adopting and carrying into effect a plan for an intercepting sewer or general system of sewerage and drainage in accordance with the first section of this act [see. 826] to cause any river, stream, or creek theretofore used for the purpose of receiving the sewage of such city, or any part thereof, to be cleansed and otherwise improved so as to render the same healthful and free from deleterious matter. (Public Laws, 1907, p. 268.)

833. *Throwing articles into stream which is the outlet of natural drainage of city.*—It shall be lawful for the city council, board of aldermen, or other governing body of any city aforesaid [any city in the State] to pass an ordinance or ordinances providing for penalties against persons convicted * * * of throwing or placing any article or thing in said river, stream, or creek [which is an outlet of the natural drainage or storm or surface flow of any city.] (Public Laws, 1907, p. 270.)

844. *Sewage-disposal plants.*—Cities of this State are hereby empowered to establish and maintain suitable plants, works, or stations for the treatment, disposal, or rendering of sewage. It shall be lawful for the municipal board, commission, or body of any city having charge of the sewers therein, to adopt

¹ Secs. 828 and 829 relate to assessments and bond issue and are therefore omitted.

an ordinance or ordinances providing for the construction and maintenance of a plant or works for the treatment, disposal, or rendering of the sewage of such city in accordance with a general plan in such ordinance or ordinances to be specified, which plan shall first be approved by the * * * [department] of health of the State of New Jersey as provided by chapter 72 of the session laws of 1900, and the acts amendatory thereof and supplementary thereto¹ * * *

867. *City may pass ordinances to protect water.*—The said board of aldermen, council, or other legislative body of said city [any city in State] shall have the power, and they are hereby authorized, to make, ordain, and establish all such ordinances, resolutions, and regulations as said body may deem necessary and proper for the * * * protection of the said water [supplied to city] * * * (Revised acts, 1877, p. 723.)

873. *Polluting water in city reservoirs, etc.*—If any person or persons * * * shall pollute, corrupt, or render impure the water in any reservoir, aqueduct, conduit, or raceway erected, built, or laid down under the provisions of this act,² * * * such person or persons and their aiders and abettors shall forfeit to the said city, to be recovered in the name of the treasurer of said city in an action of trespass in any court of this State having cognizance of the same, triple the amount of damages which shall appear on trial to have been sustained, and all such acts are hereby declared to be misdemeanors, and the parties found guilty thereof may be further punished by fine not exceeding \$500 or by imprisonment at hard labor not exceeding one year, or both, at the discretion of the court. (Revised acts, 1877, p. 725.)

909. *City may construct drains and sewers to protect water supply outside of city limits.*—In cities of this State having a public water supply derived from sources beyond the city limits it shall be lawful for the board or body having the control of such water supply to construct, maintain, and operate within the territory from which such water is derived or through which it flows, whenever it has become or may become necessary in order to protect such water from pollution, a system of drains and sewers for intercepting, taking off, and disposing of all sewage or other polluting matter.³ (Public Laws, 1907, p. 57.)

970 (as amended by Laws of 1913, p. 370). *Approval of State department of health required.*—In no case shall the construction of such system of drains or sewers be commenced or entered upon unless or until the State * * * [department] of health shall approve the construction of such system of drains or sewers as a sanitary measure and shall define in a general way the limits of the district or territory within which or for which such system of drains or sewers shall be constructed. (Public Laws, 1907, p. 57, as amended.)

971 (as amended by Laws of 1913, p. 370). *Sewage must be rendered harmless.*—Every system so constructed shall provide for the disposal of the sewage and other polluting matter taken up at a place and in a manner that shall render the same harmless, and before entering upon the construction of the same the plans prepared therefor shall have been presented to and approved by the State board of health. (Public Laws, 1907, p. 57, as amended.)

972 (as amended by Laws of 1913, p. 371). *Outhouses may be connected with sewer system by city.*—Whenever a sewer system shall be constructed as herein provided the board or body having charge of the water supply of such city shall have the power and authority at its own expense to connect such system with any outhouses or privy vaults along the line of the said sewer system or within the district indicated by the said State * * * [department] of health, and for this purpose may enter upon private or public lands and

¹ Sec. 82 et seq. below under "Water supply."

² Public Laws, 1876, p. 306. Sec. 867 is a part of the act.

make the necessary excavations and connections and install proper appliances, at the expense of such city, for the flushing of outhouses and privy vaults. In all cases the surface of the ground wherein such excavations are made, shall be restored to its original condition as near as may be. (Public Laws, 1907, p. 58.)

973. *Private sewers to be connected with sewer system.*—Whenever any building or buildings along the line of the said sewer system or within the said district may at the time of the construction of the said system have been provided with a private drainage sewer, the board or body having charge of the water supply, under whose authority the sewer system hereby authorized is constructed, is hereby authorized, to connect such private sewer with the sewer system hereby authorized, and in the construction of the said connection shall have the right to enter upon all such lands and make the necessary excavations and constructions. (Public Laws 1907, p. 58.)

976. *Sanitary disposal of matter which can not be discharged into sewer.*—Whenever there shall be within the district designated and defined as aforesaid any outhouses, privy vaults, or private drainage sewers so located that they can not be connected with the sewer system hereby authorized and provided for, then it shall be lawful for the board or body having charge of the water supply of such city to enter upon such lands and at its own expense make some sanitary arrangements for the disposal of the sewage and polluting matter therefrom; and it shall have the right from time to time to inspect the operation of such constructions, and to maintain, regulate, and repair the same, and after such provision shall have been made, it shall be the duty of the owner of such lands to use the facilities thus provided for the disposal of sewage and house drainage. (Public Laws 1907, p. 59.)

977 (as amended by Laws of 1913, p. 372). *Use of system enforced.*—Whenever any system shall have been installed under the provisions of this act within the district defined, as herein provided, it shall be the duty of every person owning or occupying premises therein to use the facilities afforded for drainage and sewerage, and to cease using any other method for the disposal of house drainage, sewage, or other polluting matter, and the State * * * [department] of health is hereby authorized and directed to enforce the provisions of this act in this respect by appropriate proceedings at law or equity.

2166. *City council may prevent pollution of water.*—The city council of such city [any city which shall adopt the provisions of the act] shall have power to make, establish, publish, modify, amend, or repeal ordinances for the following:

XI.I. To prevent the city water from being obstructed or contaminated, * * * and to provide for fines and penalties for the violation of all ordinances relating thereto. (Public Laws 1908, p. 312.)

2432. *Pollution of water supply in certain cities a misdemeanor.*—If any person shall willfully, unlawfully, and maliciously in any manner pollute, or render foul or impure any stream, lake, reservoir, or other source of supply of water for any such city [cities having less than 10,000 and more than 6,000 inhabitants] * * * shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine not exceeding \$100, or by imprisonment at hard labor not exceeding one year, or both. (Public Laws 1879, p. 163.)

2777. *Certain cities to protect water supply.*—The city council of such city [cities of the second class having less than 20,000 inhabitants] shall have power to make, establish, publish, modify, amend, or repeal ordinances for the following purposes:

XI.II. To prevent the city water from being obstructed or contaminated, * * * and to provide for fines and penalties for the violation of all ordinances relating thereto. (Public Laws 1907, p. 196.)

[COMPILED STATUTES, 1910, CRIMES.]

84. *Pollution of waters distributed for public use.*—Any person who shall throw, cause, or permit to be thrown into any reservoir, or into the waters of any pond or lake or brook, creek, or river of this State, which runs through or along the border of any city or other municipality, the waters of which are used to supply any aqueduct or reservoir for distribution for public use, any carcasses of any dead animal or any offal or offensive matter whatsoever calculated to render said waters impure, or to create noxious or offensive smells, or shall connect any water-closet with any sewer or other means whereby the contents thereof may be conveyed to and into such pond or lake or brook or creek or river or reservoir, or shall so deposit, or cause or permit to be deposited, any such carcasses, offal, or other offensive matter that the washing or waste therefrom shall or may be conveyed to and into any such pond or lake or brook or creek or river or reservoir, shall be guilty of a misdemeanor. (Public Laws, 1898, p. 818.)

86. *Pollution of waters used for ice supply.*—Any person who shall throw, cause, or permit to be thrown into the waters of any pond or lake or brook, creek, or river of this State, the waters of which may be used for the cutting and harvesting of ice, any carcasses of any dead animal or any offal or offensive matter whatsoever calculated to render said waters impure or create noxious or offensive smells, or shall connect any water-closet with any sewer or other means whereby the contents thereof may be conveyed to and into such pond or lake or brook, creek, or river, shall be guilty of a misdemeanor. (Public Laws, 1898, p. 819.)

141. *Poisoning fish.*—Any person who * * * shall willfully or maliciously put any lime or other noxious material in any such pond or water [fishpond, private water, or water in which there is any private right of fishery] with intent thereby to destroy any of the fish that may then be or that may thereafter be put therein * * * shall be guilty of a misdemeanor. (Public Laws, 1898, p. 832.)

218. *Punishment for misdemeanor.*—Any person found guilty of any crime which by this¹ or any other statute is declared to be a misdemeanor shall be punished by a fine of not exceeding \$1,000 or by imprisonment with or without hard labor, as the court may direct, for any term not exceeding three years, or both. (Public Laws, 1898, p. 854.)

[COMPILED STATUTES, 1910, FISH AND GAME.]

43. *Use of drugs for taking fish.*—It shall be unlawful to place in any of the waters of this State * * * any drug or poisoned bait for the purpose of taking, killing, or injuring fish, under a penalty of \$100 for each offense. (Public Laws, 1903, p. 534.)

44. *Deleterious substances in water.*—It shall be unlawful to allow any dye-stuff, coal tar, sawdust, tank bark [sic], lime, refuse from gas houses, or other deleterious or poisonous substance or substances to be turned into or allowed to run into any of the waters of this State in quantities destructive of life or disturbing the habits of the fish inhabiting the same under penalty of \$200 for each offense. (Public Laws, 1903, p. 534.)

202. *Placing poisonous substances in Delaware River above Trenton Falls.*—It shall be unlawful for any person to put or place in the Delaware River above Trenton Falls any * * * poisonous substances whatsoever, any drug or any poison bait for the purpose of catching, taking, killing, or injuring the fish, or to

¹ Public Laws, 1898, p. 854.

allow any dyestuff, coal or gas tar, coal oil, sawdust, tan bark, cascarius indicus (otherwise known as fish berries), lime, vitriol, or any of the compounds thereof, refuse from gas houses, oil tanks, or vessels, or any deleterious, destructive, or poisonous substances of any kind or character to be turned into or allowed to run, flow, wash, or be emptied into any of the waters aforesaid, unless it is shown that every practicable means has been used to prevent the pollution of waters in question by the escape of deleterious substances. In the case of the pollution of waters by substances known to be injurious to fishes or to fish food it shall not be necessary to prove that such substances have actually caused the death of any particular fish. Any person violating any of the provisions of this section shall, on conviction thereof, be subject to a fine of \$200. (Public Laws, 1900, p. 408.)

222. *Placing poisonous substances in Delaware River below Trenton Falls.*—(Section is identical with section 202, except that it refers to the Delaware River below Trenton Falls.)

[COMPILED STATUTES, 1910, HEALTH.]

66. *No ice to be cut or sold within limits of city without permit from board of health.*—No ice shall be cut for the purpose of being sold or used in any city of this State from any pond, creek, or river within the limits of any such city unless a permit therefor shall be first obtained from the board of health of such city, and no person or persons shall sell or deliver any ice in any city in this State without first obtaining a permit therefor from the board of health of such city; and it shall be lawful for any such board of health to refuse a permit and to revoke any granted by them as aforesaid when in their judgment the use of any ice cut or sold, or to be cut or sold, under the same is or would be detrimental to the public health. (Public Laws, 1885, p. 104.)

67. *Board may prohibit sale and use of ice in certain cases.*—The board of health of any city may prohibit the sale and use of any ice within the limits of such city when in their judgment the same is unfit for use, and the use of the same would be detrimental to the public health, and the said board may prohibit and through its officers stop, detain, and prevent the bringing of any such ice for the purpose of sale or use into the limits of any such city, and also in the same manner stop, detain, and prevent the sale or use of any such ice found within the limits of such city. (Public Laws, 1885, p. 104.)

68. *Penalty for violating provisions of act.*—Any person or persons who shall violate any of the provisions of this act, or who shall attempt to cut, sell, or bring into any city any such ice after being notified by said board of health or its officers not to do so, shall be guilty of a misdemeanor, and on conviction shall be sentenced to imprisonment in the county penitentiary for a term not to exceed six months, or to pay a fine of \$500, or both, in the discretion of the court; and it shall be lawful for the officers of said board of health or the police officers of any such city to arrest on sight any person or persons who shall be found violating any of the provisions of this act. (Public Laws, 1885, p. 104.)

69. *Provisions of sections 66-68 extended.*—The provisions of " " " [secs. 66-68] hereby are extended to all boroughs, townships, towns, and other local municipal governments in the State. (Public Laws, 1888, p. 160.)

84. *Permits to sell and deliver ice in cities.*—No person, firm, or corporation shall sell or deliver ice in any city of this State unless a permit therefor shall be first obtained by such person, firm, or corporation from the board of health of such city, and it shall be lawful for any such board of health to revoke any permit granted by it as aforesaid, when in its judgment the use of any ice that is to be sold or delivered under such permit is or would be detrimental to the public health; which revocation or any declaration of the local board to

grant a permit shall be subject to appeal to the . . . [department] of health of the State of New Jersey, which last-named . . . [department] may order a permit to be granted or a revocation of a permit to be set aside and a new permit to be granted, which order shall be binding and effective on such local board. (Public Laws, 1909, p. 298.)

85. *Ordinances relative to sale and delivery of ice.*—Any board of health in any city in this State may adopt an ordinance prohibiting the sale or delivery of ice in said city without a permit therefor¹ from said board, and empowering said board to revoke any permit issued by it when in its judgment the use of any ice which is sold or delivered under said permit is or would be detrimental to the public health, and to prohibit the use in said city of any ice which is impure or taken from any polluted source, and to prescribe in such ordinance a penalty not exceeding \$200 for a violation thereof, . . . (Public Laws, 1909, p. 298.)

88. *Sale of impure ice in cities of first class may be forbidden.*—The board of health of each of the cities of the first class in this State shall have authority to provide by ordinance for the prohibition of the use or sale of impure ice or ice cut from polluted ponds or streams, and in order to properly carry out and enforce the provisions of such ordinance to provide that all dealers in ice for domestic or public use shall obtain from the health authorities of such cities a permit, and to fix in such ordinance a penalty for the violation of the same, which shall not exceed a fine of \$50 for each offense. (Public Laws, 1905, p. 710.)

152. *When common council, etc., may exceed limit of authorized expenditure to construct sewers, etc.*—Whenever the board of health in any city of this State shall, after due examination and consideration, determine, by resolution in writing, adopted or concurred in by two-thirds of the members of said board, that it is necessary for the preservation of the public health, or the prevention of the cause or spread of disease, that a sewer or drain, or sewers or drains, should be constructed in any locality in said city, and shall certify to the common council or other legislative or governing body of such city such resolution and the reasons for which it was adopted, then said common council or other legislative or governing body, if in their judgment such sewer or drain, or such sewers or drains seem to be necessary as a sanitary measure, may construct or order, direct and cause such sewer or drain, or sewers or drains, to be constructed, although the limit of authorized expenditures for public improvements in such city would thereby be exceeded: *Provided*, That such excess of expenditure shall not in any case exceed the sum of \$50,000 in any one year. (Public Laws, 1891, p. 238.)

230. *Unlawful to permit or discharge "sludge acid" into streams.*—From and after the passage of this act it shall be unlawful for any person, persons, corporation or corporations, to permit the discharge or escape, directly or indirectly, of such refuse or residuum, resulting from the refining of petroleum, as is commonly called "sludge acid," into or upon any river, stream, watercourse, lake, pond, or other body of water, or any tidal waters within or bordering upon this State; and every violation of this act shall constitute a public nuisance and shall be punishable as such. (Public Laws 1884, p. 221.)

240. *Penalty.*—Every person, persons, corporation, or corporations violating, or whose servants or agents shall violate this act, in addition to the penalty indicated in section 1 of this act, shall forfeit and pay the sum of \$1,000 for each violation of this act which shall be proved, to be recovered in any court of competent jurisdiction by any person who shall sue for the same, one-half of said penalty to go to such person so suing therefor and the other half to go to the State. (Public Laws 1884, p. 221.)

¹ Text reads "therefor."

[COMPILED STATUTES, 1910, ICE DEALERS.]

1. *From what waters persons having ice-houses may gather ice.*—It shall be lawful for all persons having ice-houses upon the waters of this State to gather the ice in front of their lands to the middle of the several streams, ponds, and lakes upon which they are located. (Public Laws 1871, p. 21.)

2. *Ice dealers not to be interfered with.*—During the time the several ice dealers are gathering their ice crops, it shall not be lawful for any person to interfere with the same except for the purposes of navigation. (Public Laws 1871, p. 21.)

3. *To whom this act shall not extend.*—The provisions of this act shall not extend to the owners of mill ponds, nor shall it extend to parties having the mere right of way upon the shores of the several watercourses of this State. (Public Laws 1871, p. 21.)

4. *Penalty for polluting ice or destroying machines for the gathering the same.*—If any person or persons shall maliciously or willfully pollute, corrupt, or render impure the ice in front of the lands of persons having ice-houses, as described in the first section of the act to which this is a supplement, or shall willfully or maliciously destroy any engine, machine, tools, or other property used for the gathering and storing such ice, the person or persons so offending shall be deemed guilty of a misdemeanor, and being thereof convicted, shall be punished by a fine not exceeding \$100 or imprisonment at hard labor not exceeding one year, or both. (Public Laws 1882, p. 92.)

* [COMPILED STATUTES, 1910, PETROLEUM.]

5. *Definition of term "pipe line."*—The term "pipe line" wherever used in this act [secs. 5-15] shall mean any conduit through which petroleum or any of its products is conveyed or intended so to be. (Public Laws, 1884, p. 293.)

6. *Construction across fresh-water streams.*—Hereafter it shall not be lawful to construct any pipe line across any fresh-water streams in this State except in the manner to be approved by the State commissioners of water supply. (Public Laws, 1884, p. 294.)

7. *Reconstruction.*—If any pipe line now existing or hereafter constructed is or shall be so constructed that there is danger of the escape of its contents into any of the fresh-water streams of this State, it shall be reconstructed or removed in accordance with the provisions of this act. (Public Laws, 1884, p. 294.)

14. *Penalty for failure to reconstruct.*—If any pipe line shall hereafter be constructed or maintained across any fresh-water stream in this State, except in the manner approved by the State commissioners of water supply, the owners or users so constructing or maintaining the same shall be liable to a penalty of \$500 for each day they shall delay reconstructing the same, as shall be or shall have been approved by the said commissioners, according to the provisions of this act, which shall be recoverable at law in any court of competent jurisdiction by the said commissioners in the name of the State of New Jersey from the owners or users of such pipe line: *Provided, however,* That the owners of pipe lines now constructed shall not be liable to this penalty until after due notice and hearing, as provided in this act: *And provided further,* That nothing shall be so construed in this act as to relieve the owners or users of pipe lines from liability for damages which may ensue by reason of breakage or leakage, notwithstanding said pipes were constructed according to the direction and with the approval of the State commissioners of water supply. (Public Laws, 1884, p. 294.)

15. *State commissioners of water supply defined.*—The State commissioners of water supply, referred to in the title and body of this act, are the commissioners appointed under chapter 180, Laws of 1882 (secs. 4 and 6 under "Water supplies"), and their successors however appointed or designated. (Public Laws, 1884, p. 236.)

[COMPILED STATUTES, 1910, TOWNS.]

114. *Discharge of sewers into certain watercourses forbidden.*—* * * *Provided*, That no such sewer or sewers [inlet sewer or sewers leading to tidewater across intervening territory of other municipalities] shall be so constructed as to empty or discharge any of its or their contents into any creek, stream, lake, pond, or watercourse, the waters of which are used for or connect with waters used for the supply of water to any aqueduct, water main, or reservoir of any city, township, or other municipality of this State. (Public Laws, 1895, p. 186.)

283. *Penalty for polluting water in reservoir.*—If any person or persons shall willfully pollute or adulterate the waters in any reservoir erected under the provisions of this act [act enabling incorporated towns to construct water works], any person so offending shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding \$500 or by imprisonment at hard labor not exceeding three years, or both, at the discretion of the court before whom such conviction shall be had. (Public Laws, 1884, p. 50.)

240. *Penalty for polluting water in any reservoir.*—If any person or persons shall willfully pollute or adulterate the waters in any reservoir erected under the provisions of this act [act enabling towns and townships to construct waterworks], any person so offending shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding \$500 or by imprisonment at hard labor not exceeding three years, or both, at the discretion of the court before whom such conviction shall be had. (Public Laws, 1893, p. 153.)

[COMPILED STATUTES, 1910, WATER SUPPLY.]

4. *Commissioners appointed.*—There shall be appointed by the governor four commissioners for the purposes hereinafter named, who shall serve without pay,¹ and whose expenses shall be paid * * *. (Public Laws, 1882, p. 264.)

6. *Duties of these commissioners.*—Said commissioners, when applied to, * * * shall consider and determine upon such plans as they may deem most practicable for the storage of any of the waters of this State for the purpose of furnishing any of the cities and towns of this State with a good and sufficient water supply.² (Public Laws, 1882, p. 264.)

12. *State water supply commission (now department of conservation and development) established.*—The governor, by and with the advice and consent of the senate, shall appoint five citizens of this State to constitute a commission, to be known as the State water-supply commission [department of conservation and development]. * * * It shall be charged with a general supervision over all the sources of potable and public water supply, to the end that the

¹ Public Laws, 1895, p. 424, repeals this law in so far as it relates to townships.

² An amendment to sec. 10 made the following year (Public Laws, 1883, p. 232) gave to each commissioner \$5 for every day actually employed in the duties of his office.

³ This law was given in the Compiled Statutes of 1910 in its entirety (as amended); but it seems unnecessary to give it here, as the duties of the commission appear to have been entirely taken over by the State water supply commission (later the department of conservation and development). However, the commission was not abolished by law. See also under "Petroleum."

same may be economically and prudently developed for the use of the people of this State. (Public Laws, 1907, p. 633.)

13. *Plans for municipal water supply must be submitted to department of conservation and development.*—No municipal corporation, corporation, or person engaged in supplying or proposing to supply the inhabitants of any municipal corporation with water shall have power to condemn lands or water for any new or additional source of water supply or to divert water from such new or additional source until such municipal corporation, corporation, or person has first submitted descriptions thereof * * * to said * * * [department], and until said * * * [department] shall have approved the same: *Provided*, That nothing in this section shall be interpreted to restrict any municipality in acquiring, by purchase or condemnation, any existing or operating waterworks supplying said municipality with water * * *. (Public Laws, 1907, p. 634.)

21. *Supervision extends to well, subsurface, and percolating water supplies.*—The * * * [department of conservation and development] shall have the same jurisdiction and supervision over well, subsurface, or percolating water supplies now or hereafter furnished to the inhabitants of any municipal corporation as it now has over surface water supplies so furnished, except as such jurisdiction and supervision may be herein modified. (Public Laws, 1910, p. 551.)

22. *Approval of department necessary for use of subsurface, well, or percolating water supplies.*—(Section practically identical with 13 above, except that it refers to well, subsurface, and percolating water supplies.) (Public Laws, 1910, p. 551.)

28. *Department of conservation and development may contract with municipality to supply water.*—The * * * [department of conservation and development] may contract with any municipality or municipalities to provide the inhabitants thereof with water for public or private use, and the municipality or municipalities may enter into such contract in the manner and upon the terms hereinafter mentioned.¹ (Public Laws, 1910, p. 546.)

38. *Supervision of water-supply districts by department of conservation and development.*—Whenever the legislature by special act shall create and establish a water-supply district within this State, defining the territory included therein, such territory and the development thereof so far as the purposes of this act [secs. 38-46, Compiled Laws of 1910, under "Water supply"] are concerned, shall be under the care and supervision of * * * [the department of conservation and development] which shall have, in addition to the powers already enjoyed by it, all other power and authority proper and necessary to carry out and effectuate the purposes and objects of this act. (Public Laws, 1907, p. 639.)

39. *Control and storage of water, etc., by department.*—Said * * * [department] is hereby given full power and authority to devise and adopt plans for suitable works for the storage and control of waters flowing through said district or any part thereof and to make, construct, and maintain such dams, reservoirs, sluices, canals, aqueducts, and other works as may be appropriate for preventing damage to property in said district from the overflow of any such river or rivers, and also for the preservation, storage, and retention of said waters which would otherwise be wasted * * *. (Public Laws, 1907, p. 640.)

¹ It appears unnecessary to quote the sections of this act (Public Laws, 1910, Compiled Laws, 1910, secs. 28-37, under "Water supply," p. 546) which give the terms of such contract. The act is supplemented by Public Laws, 1911, p. 528 and p. 533, neither of which need be given herein.

47. *Pollution of Passaic River and tributaries prohibited.*—No person or persons, natural or artificial, shall throw, cause, or permit to be thrown into the waters of the Passaic River or of any of the tributaries thereof above the great falls of the Passaic River at Paterson any carcass of any dead animal or any offal or offensive matter or any matter or thing detrimental to health; no person or persons, natural or artificial, shall discharge or cause to be discharged into the waters aforesaid any sewage from any privy, water-closet, house, shop, drain, or place whatsoever; no person or persons, natural or artificial, shall deposit or cause or permit to be deposited any carcass of any dead animal, offal, or offensive matter so that the washing or waste therefrom shall or may be conveyed to and into the waters aforesaid. (Public Laws, 1897, p. 99.)

48. *Maintenance of buildings whose drainage might pollute said river.*—No person or persons, natural or artificial, shall maintain or erect or cause or permit to be maintained or erected any privy, water-closet, slaughterhouse, or other structure the drainage from which might or would tend to pollute the waters or any part of the waters aforesaid within such a distance from the banks of the said Passaic River or of any of the tributaries thereof above the great falls of the Passaic River at Paterson as would make the drainage from any such privy, water-closet, slaughterhouse, or other structure be liable to drain into the waters aforesaid or any part thereof by such drainage, percolation, or otherwise. (Public Laws, 1897, p. 99.)

49. *Penalty.*—Any person or persons, natural or artificial, violating any of the provisions of this act [secs. 47-54] shall forfeit and pay a penalty of \$20 for each violation; * * * the maintenance of anything hereinbefore prohibited to be maintained shall be and is hereby constituted a separate violation for each day of maintenance. (Public Laws, 1897, p. 100.)

53. *Restraint on violations.*—Any of the local boards of health hereinbefore referred to [any board of health having jurisdiction over territory bordering on Passaic River or its tributaries] may file a bill in the court of chancery, in the name of the State, on the relation of such local board of health, for an injunction to prohibit the maintenance of anything, the maintenance of which is hereinbefore prohibited, and such action shall proceed in the court of chancery according to the rules and practice of the court. (Public Laws, 1897, p. 101.)

54. *Abatement of pollutions by chancery court.*—In all cases in which it shall be ascertained by the court of chancery in such suit that anything is maintained contrary to the provisions of this act, that court shall have power to abate the same and prevent its further maintenance by injunction or otherwise, according to the practice of the court, and may charge the costs of such suit upon the defendant or defendants and enforce the collection thereof according to its rules and practice. (Public Laws, 1897, p. 101.)

(55-60. Public Laws, 1898, p. 233. This act establishes a commission to consider the subject of the pollution of the rivers and streams of New Jersey, to provide a plan for the prevention thereof, and for the relief of the persons and property affected thereby, and to provide for the expenses necessary for that purpose. As there is nothing in the act to indicate that the commission was to be permanent, the text is omitted from this appendix, although the law is given in the Compiled Statutes.)

61. *Prohibiting pollution of potable water.*—No excremental matter, domestic, factory, workshop, mill or slaughterhouse refuse, creamery or cheese factory waste, garbage, dyestuff, coal tar, sawdust, tan bark, or refuse from gas houses, other polluting matter shall be placed in, or discharged into, the waters, or placed or deposited upon the ice of any river, brook, stream, or any tributary

or branch thereof, or of any lake, pond, well, spring, or other reservoir above the point from which any city, town, borough, township, or other municipality, shall or may obtain its supply of water for domestic use; nor shall any such excremental matter, domestic, factory, workshop, mill, or slaughterhouse refuse, creamery or cheese factory waste, garbage, dyestuff, coal tar, sawdust, tan bark, or refuse from gas houses, or other polluting matter, be placed or suffered to remain upon the banks of any such river, brook, stream, or of any tributary or branch thereof, or of any lake, pond, well, spring, or other reservoir, above the point from which any city, town, borough, township, or other municipality shall or may obtain its supply of water for domestic use as aforesaid; and any person or persons, or private or public corporation, which shall offend against any of the provisions of this section, shall be liable to a penalty of \$100 for each offense; and each week's continuance, after notice by the State or local board of health to abate or remove the same, shall constitute a separate offense: *Provided, however,* That nothing in this section contained shall be construed to repeal, modify, or otherwise affect any law or statute now conferring upon any local board of health the power or authority to institute any proceedings in any court of this State for the recovery of any penalty for, or obtaining any injunction against, the pollution of any of the waters of this State. (Public Laws, 1899, p. 73, as amended by Public Laws, 1909, p. 224.)

63. *Supervision of purity of water supply by State department of health.*—The State * * * [department] of health shall have the general supervision, with reference to their purity, of all rivers, brooks, streams, lakes, ponds, wells, springs, or other reservoirs in the State, the waters of which are or may be used as the source or sources of public water supplies for domestic use, together with the waters feeding the same, and shall have the authority, from time to time, as they deem necessary or proper to examine the same and to inquire what, if any, pollutions exist and their causes; and the said State * * * [department] of health in carrying out the provisions of this section may from time to time as they deem it necessary or proper address inquiries in printed or written form to any local board of health, municipal or township authority, corporation, or person or persons, which inquiries it shall be the duty of the persons or parties addressed to answer within such time as the said State * * * [department] of health may in such inquiries prescribe. (Public Laws, 1899, p. 75.)

64. *Injunction to prohibit further violations.*—If any person or persons, corporation or corporations, city, town, borough, township, or other municipality of this State, or any municipal or township authority, shall violate any of the provisions of the first section of this act [see. 61], it shall be lawful for the said State * * * [department] of health, instead of proceeding in a summary way to recover the penalty prescribed in said section, to file a bill in the court of chancery in the name of the State on the relation of such * * * [department] for an injunction to prohibit the further violation of the said section * * *. (Public Laws, 1899, p. 76.)

61-64 supplemented by the following act (Laws of 1912, p. 553):

1. *Notification required where alterations to water plant will affect purity of supply.*—Whenever any person or corporation furnishing water for potable purposes finds it necessary for any reason whatever to make any change, temporary or permanent, in the operation of their plant or in the manner of furnishing such water which may in any way, either temporarily or permanently, tend to deteriorate the potable quality of the water so furnished by pumping directly into reservoirs or supply mains untreated water when the ordinary supply is subjected usually to some form of purification treatment or by any other similar

or dissimilar change in said supply, the tendency of which is to cause polluted waters to be forced into distributing pipes, the said person or corporation, before making such change or, in case of emergency, requiring the immediate making of changes in the operation of the plant or in the manner of furnishing such water, within six hours after making such change shall notify the local board of health and shall also notify, by telegraph or telephone, the State board of health as to the character and estimated duration of such change.

2. *Penalty.*—Every person or corporation violating any of the provisions of this act, either by corporate action or the unauthorized act of an employee, shall be subject to a penalty of \$100, to be recovered in an action of debt by the local board of health, or, if there is no local board of health, then at the suit of the State * * * [department] of health.

3. *Notification will not prevent suit by aggrieved person.*—Nothing herein contained shall operate to relieve such person or corporation from any suit or action on behalf of any person aggrieved by the action of such person or corporation in making any such change as is referred to in paragraph 1 of this act.

65. *Sale of potable water.*—No person or corporation now or hereafter engaged in the distribution or sale of water for potable purposes shall deliver to any consumer any water which, in the opinion of the * * * [Department] of Health of the State of New Jersey, is polluted, contaminated, or impure, or which is obtained from any source which, in the opinion of the * * * [Department] of Health of the State of New Jersey, is or may become polluted, contaminated, or impure, unless purification by filtration or other means acceptable to the * * * [Department] of health of the State of New Jersey shall be accomplished before such water is distributed. (Public Laws, 1909, p. 457.)

66. *Dealers to show source.*—Every person or corporation intending to furnish water for potable purposes shall submit to the * * * [Department] of Health of the State of New Jersey a detailed report containing all information regarding the source from which supply is to be derived, and until such source has been approved by the * * * [Department] of Health of the State of New Jersey it shall be unlawful for said person or corporation to distribute such water to any consumer or consumers for potable purposes. (Public Laws, 1900, p. 457.)

67. *Plans for purification plant approved by State board of health.*—Every person or corporation desiring to install a purification plant for the purification of water intended for potable use shall submit detailed plans and specifications for such purification plant to the * * * [Department] of Health of the State of New Jersey, and such plant shall not be constructed or operated until the aforesaid plans and specifications shall have been approved by the * * * [Department] of Health of the State of New Jersey. (Public Laws, 1900, p. 457.)

68 (as amended by Laws 1915, p. 710). *Supervision of water plants.*—The * * * [Department] of Health of the State of New Jersey shall have the supervision of the operation of all water plants throughout the State with respect to the purity of the supply of potable water furnished by any such water plant, and every person or corporation furnishing water for potable use shall comply with any and all orders of the * * * [Department] of Health of the State of New Jersey relating to the purity of such waters. The * * * [Department] of Health of the State of New Jersey shall cause to be collected (by its inspectors or other authorized agents), as often as they shall deem necessary (but not less than four times each year), a sample or samples of the water supplied by each person or corporation furnishing water for potable use. Any person or corpo-

ration failing to allow the sample or samples for analysis to be collected as provided for in this section, or interfering with any member of the * * * [Department] of Health of the State of New Jersey, or duly authorized agent or employee of said * * * [department], in the supervision of any water plant, shall be liable to a penalty of \$100, to be recovered in an action of debt by the * * * [Department] of Health of the State of New Jersey.

69. *Investigations of violations.*—The * * * [Department] of Health of the State of New Jersey shall have the power, and it shall be the duty of said board to investigate any and all violations of any of the provisions of this act. (Public Laws 1909, p. 458.)

70. *Injunction to prohibit violations.*—It shall be lawful for the * * * [Department] of Health of the State of New Jersey to file a bill in the court of chancery, in the name of the State on the relation of said board, for an injunction to prohibit any violation of any of the provisions of this act other than the violations enumerated in * * * [sec. 68], for which a penalty is provided, and every such action shall proceed in the court of chancery according to the rules and practices of bills filed in the name of the attorney general on the relation of individuals, and cases of emergency shall have precedence over other litigation pending at the time in the court of chancery, and may be heard on final hearing within such time and on such notice as the chancellor shall direct. (Public Laws 1909, p. 458.)

71. *Definitions.*—The word "person," as used in this act, shall be construed so as to mean any firm or copartnership, and the word "corporation" to include any municipal corporation. (Public Laws 1909, p. 459.)

72. *Boundaries of watershed wholly in State set out.*—Upon the formal request of the board of water commissioners, or other board or official having charge of the public water supply of any city of this State, which said water supply is derived from surface drainage in any watershed wholly within this State, it shall be the duty of the * * * [Department] of Health of the State of New Jersey to prescribe and fix territorial limitations bounding such watershed, which shall thereafter be known as ----- watershed. The name of such watershed to be inserted in the certificate hereinafter provided. (Public Laws 1909, p. 213.)

73. *Notice to public and railroad affected.*—The board of water commissioners, or other board or official making such application to the * * * [Department] of Health of the State of New Jersey, shall, upon the certificate of the said board setting out the boundaries of the said watershed, give public notice of such establishment, by advertisement in two newspapers of general circulation in the vicinity of the said watershed, at least once a week for four weeks, which advertisement shall run in the name of the * * * [Department] of Health of the State of New Jersey, and shall contain such sufficient description of the boundaries adopted as will identify the said watershed and the boundaries thereof, and a copy thereof be served upon any agent in charge of any ticket office of any railroad affected by the provisions of this act. (Public Laws 1909, p. 214.)

74. *No discharge into such watershed.*—When such territorial limitations for any such watershed shall have been established by the * * * [Department] of Health of the State of New Jersey, and notice thereof shall have been given in the manner herein prescribed, it shall thereafter be unlawful for any railroad company operating trains, or steamboat or power-boat company operating boats within the territorial limitations of such watershed, to discharge or allow any discharge from water-closets and urinals upon railroad trains or any such steam or other power boats as may be operated therein within the territorial limitations prescribed for such watershed. (Public Laws 1909, p. 214.)

75. *Penalty; how recoverable.*—Every corporation violating the provisions of this act shall incur a penalty of not exceeding \$100, to be recovered in an action of debt at the suit of the board of water commissioners or other board or official having charge of the water supply of such city as shall derive its supply from said watershed; and all moneys which shall be recovered in such manner shall be paid into the treasury of the State; and every person violating any provision of this act shall be guilty of a misdemeanor. (Public Laws 1909, p. 214.)

76 (as amended by Public Laws, 1913, p. 329). *Discharging of sewage, etc., into fresh water.*—No person shall hereafter discharge or permit to be discharged into any fresh water any sewage, excremental matter, domestic refuse, or other polluting matter. The term "fresh water" as used in this act shall be taken to mean and include all water commonly known as fresh and which may be used for human consumption, irrespective of whether such water shall be found in a stream where the tide ebbs and flows or not: *Provided*, That nothing in this section shall prohibit the discharge of the effluent from any sewage-disposal plant or plant for the treatment of sewage heretofore approved by the State sewerage commission when said commission existed, or heretofore or hereafter approved by the * * * [Department] of Health of the State of New Jersey, so long as said sewage-disposal plant or plant for the treatment of sewage is operated in accordance with the requirements of law and the orders and regulations of the said * * * [Department] of Health of the State of New Jersey, but if said * * * [Department] of Health shall determine that such sewage-disposal plant or plant for the treatment of sewage is not operated in accordance with the requirements of law, or if the effluent from said plant is determined by said * * * [Department] of Health to be insufficiently purified, then the provisions of this section shall apply to such effluent.

77. *Penalty.*—Any person who shall violate any of the provisions of this act shall be liable to a penalty of \$50 for each offense, to be recovered in an action of debt by the * * * [Department] of Health of the State of New Jersey, said penalty when recovered by said * * * [Department] of Health of the State of New Jersey to be paid into the treasury of this State. (Public Laws, 1910, p. 337.)

78. *Notice to discontinue violation.*—It shall be the duty of the * * * [Department] of Health of the State of New Jersey to give notice in writing to any person violating the provisions of this act, to discontinue such violation, and if said violation be not discontinued within 10 days from the date of service of said notice, then it shall be lawful for the said * * * [Department] of Health to institute a suit to recover the penalty provided for in the second section of this act. The said notice shall describe in general terms the location of the premises from which said violation occurs. (Public Laws, 1910, p. 337.)

79. *Injunction to restrain violation.*—Whenever any person shall violate any of the provisions of this act, it shall be lawful for the State * * * [Department] of Health, either before or after the institution of proceedings for the collection of the penalty imposed by this act for such violation, to file a bill in the court of chancery in the name of the State, at the relation of such board, for an injunction to restrain such violation and for such other or further relief in the premises as the court of chancery shall deem proper, but the filing of such bill, or any of the proceedings thereon, shall not relieve any party to such proceedings from the penalty or penalties prescribed by this act for such violation. (Public Laws, 1910, p. 338.)

80. *"Person" defined.*—The word "person" as used in this act shall be construed to imply both the plural and the singular, as the case may demand.

and shall include corporations, companies, associations, and societies, as well as individuals, and the word "corporations" shall include municipal corporations. (Public Laws, 1910, p. 338.)

81. *How act is to be construed.*—Nothing in this act contained shall be construed to operate as a repeal of any act of the legislature designed to secure the purity of the public supplies of potable water, or to prevent the pollution of streams, whether such streams be tidewater streams or not, but this act shall be deemed only to be additional legislation.

86. *Department of health to investigate methods of sewage disposal, etc.*—It shall be the duty of * * * [the State department of health] to investigate the various methods of sewage disposal, in order that it may be able to make proper recommendations in regard thereto; it shall investigate all complaints of pollution of the waters of this State which shall be brought to its notice, and if the said * * * [department] find that any of the waters of this State are being polluted, to the injury of any of the inhabitants of this State, either in their health, comfort, or property, it shall be the duty of said * * * [department] to notify in writing any person, corporation, or municipality found to be polluting said waters that prior to a time to be fixed by said * * * [department], which time shall not be more than five years from the date of said notice, said person, corporation, or municipality must cease to pollute said waters and make such disposition of their sewage or other polluting matter as shall be approved by the State * * * [department of health]; *Provided, however,* That any person, corporation, or municipality aggrieved by the said finding may appeal therefrom to the court of chancery at any time within six months after being notified thereof, and the said court is hereby authorized and empowered to hear and determine such appeal in a summary manner according to the course and practice of said court in other cases and thereupon to affirm the finding of said * * * [department] or to reverse or modify such finding in whole or in part, as to the said court shall seem just and reasonable. (Public Laws, 1900, p. 115.¹)

87. *Unlawful to build sewers so as to pollute streams.*—It shall be unlawful for any person, corporation, or municipality to build any sewer, drain, or sewerage system from which it is designed that any sewage or other harmful and deleterious matter, solid or liquid, shall flow into any of the waters of this State so as to pollute or render impure said waters, except under such conditions as shall be approved by the State * * * [department of health]; *Provided,* That the provisions of this section shall not be deemed to prohibit the use or extension of existing sewers, drains, or sewerage systems, unless the person, corporation or municipality controlling said sewer, drain, or sewerage system shall be served with a notice to cease pollution as provided by * * * [sec. 86]. (Public Laws, 1900, p. 115.)

88. *Discharge of sewage plant.*—It shall be unlawful for any person, corporation, or municipality to build or cause to be built, or operate, any plant for the treatment of sewage or other polluting substance, from which the effluent is to flow into any of the waters of this State, except under such conditions as shall be approved by the State * * * [department of health], to whom any new plans shall be submitted before building. (Public Laws, 1900, p. 116.)

89. *Where unlawful to allow discharge.*—It shall be unlawful for any person, corporation, or municipality, after the date specified in the notice provided for by * * * [sec. 85], to permit or allow any sewage, or other polluting mat-

¹ This law establishes a State sewerage commission, the duties of which were transferred to the department of health (then board of health) by Public Laws, 1908 (p. 605), as amended by Public laws, 1909 (p. 215). See section 127 below.

ter, to flow into said waters from any sewer, drain, or sewerage system, under the control of said person, corporation, or municipality, except under such conditions as shall be approved by the State * * * [department of health]. (Public Laws, 1900, p. 116.)

90. *When injunction may be invoked.*—It shall be lawful for the * * * [department] to apply to the court of chancery of this State for a writ or writs of injunction to prevent the violation of the provisions of this act, and it shall be the duty of the said court, in a summary way, to hear and determine the merits of said application, and to restrain, in all such cases, any person, corporation, or municipality from polluting any of the waters of this State, in violation of the provisions of this act. (Public Laws, 1900, p. 116.)

91. *Information regarding disposition of sewage.*—* * * whenever required by said * * * [department], the mayor of every municipality and the chairman of every township committee of every township now having, using, owning, leasing, or controlling a sewerage plant or system, shall furnish to said commission, on blanks to be provided by said * * * [department], a statement showing the disposition made of the sewage of their respective municipalities or townships, and as near as possible the amount discharged each 24 hours, and such other information and data as may be called for by said banks, to be provided as aforesaid by said * * * [department]. (Public Laws, 1900, p. 116.)

93. *Sewerage districts.*—And whereas, in order to prevent the pollution of the waters of this State, it is deemed necessary to establish a proper system or systems of sewerage and drainage wherein may or may not be included a system or systems of sewage-disposal works for the scientific treatment and proper disposal of sewage and sewage matter and the effluent thereof, and the establishment of any such system or systems may render proper or necessary the formation or creation of sewerage districts embracing portions or the whole of the territory of two or more of the municipalities of this State within which districts such system may be constructed, maintained, and operated, and such municipalities may be unable, through lack of power and authority, or otherwise, to agree upon the establishment of any such system or systems or upon the extent or limits of the territory of their respective municipalities to be included in any such district or districts and devoted to the uses and purposes of any such system or systems as aforesaid; therefore, upon presentation to said * * * [department of health] of a petition in writing, * * * requesting said * * * [department] to create and establish such district for either or both of the purposes aforesaid; * * * it shall be lawful for said * * * [department of health] to appoint a time and place when and where it will attend and give public hearing of the matters contained in said petition to all persons and parties interested therein; * * *. (Public Laws, 1900, p. 117.)

94. *Department of health may establish such district.*—If after such hearing, said * * * [department], or a majority thereof, shall deem it advisable to comply with the request of said petition, and that a district for the purpose or purposes, or either of them therein stated, should be created and established, said * * * [department] shall adopt a resolution to that effect * * *. (Public Laws, 1900, p. 119.)

95. *Election of members to sewerage board.*—After the creation and establishment of any sewerage district as aforesaid, an election shall be held therein at the same time as the next annual election for members of assembly shall be held throughout this State; * * * at such first election the legal voters resident in said district shall elect five persons, resident in said district, to be

members of and compose the "sewerage board of district No. --," as the case may be; and annually thereafter * * * the legal voters resident in said district shall elect one person, resident in said district, to be a member of said sewerage board, to serve for the term of five years * * *. (Public Laws, 1900, p. 120.)

105. *Power of sewerage board.*—Any such board * * * shall have full power and authority within its respective district under the supervision, direction, and control of the State * * * [department of health] to construct, maintain, and operate in said district a system of sewerage and drainage, or of sewage-disposal works, or both, with the necessary pipes, drains, conduits, fixtures, pumping works, and other appliances * * *. (Public Laws, 1900, p. 124.)

123. *Notice to cease pollution of waters.*—The State * * * [department of health] is hereby authorized and empowered to inspect any of the waters of this State, and if it finds that any of the waters of this State are being polluted in such manner as to cause or threaten injury to any of the inhabitants of this State, either in health, comfort, or property, it shall be its duty to notify, in writing, any person, municipal or private corporation found to be polluting said waters that prior to a time to be fixed by said * * * [department], which time shall not be more than five years from the date of said notice, said person or corporation must cease to pollute said waters and make such other disposition of the sewage or other polluting matter as shall be approved by said * * * [department]; any person or corporation aggrieved by any such finding may appeal therefrom to the court of chancery at any time within three months after being notified thereof, and the said court is hereby authorized and empowered to hear and determine such appeal in a summary manner, according to its course and practice in other cases, and thereupon to affirm, reverse, or modify the finding of said * * * [department] in such manner as it may deem just and reasonable. (Public Laws, 1907, p. 300.)

124. *May apply for injunction.*—The State [department of health] is hereby authorized to apply to the court of chancery for writ of injunction to prevent any violation of or to enforce the provisions of this act and the act to which this is a supplement,¹ and it shall be the duty of the said court, in a summary way, to hear and determine the merits of said application; and in all such cases to restrain violation of or enforce the provisions of the said acts. (Public Laws, 1907, p. 361.)

125. *Meaning of "waters."*—"Waters of this State," as used in this act and the act to which this is a supplement, shall include the ocean and its estuaries, all springs, streams, and bodies or surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction. (Public Laws, 1907, p. 361.)

127. *Duties vested in State sewerage commission performed by State board of health.*—From and after the passage and approval of this act all powers and duties heretofore vested in and executed by the State sewerage commission, pursuant to the act entitled "An act to prevent the pollution of the waters of this State by the establishment of a State sewerage commission, and authorizing the creation of sewerage districts and district sewerage boards, and prescribing, defining, and regulating the powers and duties of such commission and such boards," approved March 24, 1899, and the acts supplementary thereto and amendatory thereof,² shall vest in and be executed by the * * * [depart-

¹ Supplements law just quoted.

² See above secs. 86-91, 93-95, 105, 123-125, which are taken from this law and its supplements.

ment] of health of the State of New Jersey. (Public Laws, 1908, p. 605, as amended; Public Laws, 1909, p. 215.)

130. *Sewers and drainage commissioners.*—Upon the creation and incorporation by the legislature of any sewerage and drainage district for the purpose mentioned in the title of this act [of relieving the streams and rivers in sewage and drainage districts from pollution and to provide a plan for the prevention thereof and providing for the raising, expenditure, and payment of moneys necessary for this purpose] it shall be the duty of the governor of this State forthwith to appoint therein and therefor five able and discreet men, residents within such district * * * who when so appointed, commissioned, and sworn shall constitute a board of commissioners, to be known as the — district sewerage and drainage commissioners * * *. (Public Laws, 1902, p. 195.)

133. *Powers and duties of commissioners as to investigations.*—When duly organized the said commissioners shall at once, with the aid and assistance of such engineers and other agents as they may deem proper, proceed to investigate methods and plans for relieving the streams and rivers within the said district from pollution and for preventing the pollution of the same and to determine the apportionment of the capacity of sewer provided for each municipality in any intercepting sewer, sewers, or disposal works: *Provided*, That before a final determination as to the plan or method to be adopted for the purpose an opportunity shall be given the governing body of each municipality to be heard in relation thereto, and after said hearing, as soon as the said commissioners have adopted a plan or method for this purpose, they shall report the same to the respective municipalities of the district and to the legislature of this State, together with a bill providing therefor and for the expenses thereof. (Public Laws, 1902, p. 197.)

139. *Exclusive control over prevention of pollution of waters.*—When the said board of commissioners are appointed and organized under this act it shall have absolute control of and supervision over the prevention of pollution throughout the said sewerage or drainage district for which the said commissioners were appointed, exclusive of any other body or board in this State now having control of the same * * *. (Public Laws, 1902, p. 199.)

140 (as amended by Public Laws, 1917, p. 502). *Discharge of sewage into certain portion of Passaic River prohibited.*—Every municipality, corporation, and individual is hereby prohibited and forbidden to discharge, directly or indirectly, any sewage or other polluting matter into the waters of the Passaic River or at any point between the Great Falls in the city of Paterson and the mouth of said river at Newark Bay or into any tributaries of the Passaic River which empty into the Passaic River between said points after the 31st day of December, in the year 1918; and the Passaic Valley sewerage commissioners are hereby authorized and empowered to enforce the provisions of this act over and throughout all municipalities which may, or the inhabitants of which may, directly or indirectly, discharge sewage or other polluting matter into the waters of the Passaic River between the points above designated or into the tributaries aforesaid, after the said 31st day of December, 1918.

The Passaic Valley sewerage commissioners are hereby authorized and directed, within 30 days after the approval of this act, to notify each municipality from which sewage or other polluting matter is or may be discharged into the said river between said points, either directly or indirectly, and the inhabitants thereof, that the discharge of sewage and other polluting matter into the waters of the said river must be discontinued on or before the 31st day of December, in the year 1918.

Such notice shall be in writing, signed by the president and secretary of Passaic Valley sewerage commissioners, and shall be served upon the clerk or the equivalent officer of every such municipality and shall be published in one of the newspapers printed and circulating in the counties of Passaic, Bergen, Hudson, and Essex for two consecutive weeks, once in each week, such public notice to be in the following form:

To whom it may concern: Public notice is hereby given that the discharge of sewage and other polluting matter into the waters of the Passaic River at any point between the Great Falls, at the city of Paterson, and Newark Bay, and into the tributaries of said river emptying therein between said points is prohibited, and must cease and be discontinued after December 31st in the year 1918.

The Passaic Valley sewerage commissioners are further authorized and empowered to institute in their corporate name suits at law or in equity as may be deemed necessary or appropriate to enforce the provisions of this section of the act after said 31st day of December, in the year 1918, and the court of chancery of this State is hereby vested with special jurisdiction to enforce the provisions of this section of this act in a summary manner upon application of the Passaic Valley sewerage commissioners. (Public Laws, 1907, p. 22, as amended.)

141. *Construction of intercepting sewers to prevent pollution.*—The governing body or board having charge of finances of any municipality or municipalities, lying in whole or in part within the Passaic Valley sewerage district may, by resolution, determine that it is advisable and to the interest of such municipality or municipalities, in order to comply with the provisions of this act, to cause the sewage and other polluting matter discharging or which may be discharged into the waters of the Passaic River, from its or their territory, within the Passaic Valley sewerage district, to be intercepted by a trunk or main intercepting sewer or sewers, and to be conducted to a safe and proper place for discharge and disposal, and there to be discharged or disposed of. * * * (Public Laws, 1907, p. 24.)

142. *Maps and specifications to be prepared by the Passaic Valley sewerage commissioners.*—Upon receiving a copy of such resolution or resolutions * * * the Passaic Valley sewerage commissioners shall forthwith prepare * * * maps, plans, and specifications and estimates * * *. (Public Laws, 1907, p. 25.)

143. *Municipalities may enter into contracts for intercepting sewers.*—Any two or more of said municipalities, * * * are hereby authorized and empowered, by resolution of their governing bodies or boards having charge of their finances, to enter into a contract in writing with each other and with the Passaic Valley sewerage commissioners, in their corporate capacities, for the construction, maintenance, and operation of said sewer or sewers, plant, or works, with the appurtenances * * *. (Public Laws, 1907, p. 26.)

152. *Passaic Valley sewerage commissioners authorized to enter into contract with United States.*—The Passaic Valley sewerage commissioners are hereby authorized and empowered, for themselves and their successors, to enter into a stipulation and contract with the United States concerning the manner in which any sewer made or managed by said Passaic Valley sewerage commissioners and discharging into New York Bay shall be constructed, maintained, and operated, and concerning the character and effects of the sewage discharged by said sewer into New York Bay, and concerning the terms or conditions in reference to the construction, maintenance, operation, or effects of such sewer, which said Passaic Valley sewerage commissioners consent to have introduced into such permits as may be requisite under the statutes of the United States

for the construction, maintenance, or operation of said sewer; It being agreed in such contract on the part of the United States, through its Attorney General, that upon the execution of such stipulation and contract the United States will dismiss, or cause to be dismissed, its intervention in the suit above mentioned [suit in United States Supreme Court between people of the State of New York, complainants, and the State of New Jersey and the Passaic Valley sewerage commissioners, defendants], and will not again intervene in such suit. (Public Laws, 1910, p. 267.)

[PUBLIC LAWS, 1911, P. 435.]

SEC. 1. *Department of conservation and development to approve water supplies.*—It shall be lawful for the board of aldermen, common council, board of water commissioners, or other governing body of any municipal corporation in this State, owning or controlling waterworks, to enter into and make a contract or contracts with any municipal corporation in this State to furnish a supply of water for public or private use for the term of a year or years; provided there shall be first obtained the approval of the * * * [department of conservation and development], which approval and consent said * * * [department] may withhold or grant upon such terms as it may seem proper, but in case approval and consent are withheld, the reason for such withholding shall be furnished by said * * * [department] to the municipality applying therefor.

SEC. 2. *Term.*—Where said waterworks are under the control of a board of water commissioners, no contract shall be made for a term exceeding three years without the consent of the governing board of the city owning or controlling said waterworks.

[PUBLIC LAWS, 1911, P. 556.]

SEC. 13. *Putting poisonous substance into Delaware River and Bay.*—It shall be unlawful for any person to put or place in the Delaware River and Bay lying between the States of New Jersey and Delaware and any of the tributaries of said river and bay within said limits wherein the tide ebbs and flows, any * * * poisonous substances whatsoever, or any drug, or any poison bait for the purpose of catching, taking, killing, or injuring the fish, or to allow any dyestuff, coal or gas tar, coal oil, sawdust, tan bark, cocculus indicus (otherwise known as fish berries), lime, vitriol, or any of the compounds thereof, refuse from gas houses, oil tanks, or vessels, or any deleterious, destructive or poisonous substances of any kind or character to be turned into or allowed to run, flow, wash, or be emptied into any of the waters aforesaid, unless it be shown that every practicable means has been used to prevent the pollution of waters in question by the escape of deleterious substances. In the case of the pollution of waters by substances known to be injurious to fishes, or to fish food, it shall not be necessary to prove that such substances have actually caused the death of any particular fish. Any person violating any of the provisions of this section shall, on conviction thereof, be subject to a fine of \$200.

[PUBLIC LAWS, 1912, P. 16.]

SEC. 3. *Villages may protect water supply.*—The trustees [of any village] shall have the power and they are hereby authorized to make, ordain, and establish all such ordinances, resolutions, and regulations as said body may deem necessary and proper for the * * * protection of the said water [used for public and domestic use] * * *.

[PUBLIC LAWS, 1912, P. 26.]

SEC. 1. *Preservation of purity of water used by hatchery.*—It shall be unlawful for any person or corporation to put or place in any water used by a State fish hatchery any * * * poisonous substances whatever, or any drug or any poison bait, or to allow any dyestuff, coal or gas tar, coal oil, sawdust, tan bark, cocculus indicus (otherwise known as fish berries), lime, vitriol, or any of the compounds thereof, refuse from gas houses, oil tanks, or tanneries, or any deleterious, destructive, or poisonous substances of any kind or character, to be turned into or allowed to run, flow, wash, or be emptied, or find its way, into any water used by a State fish hatchery, or to erect or maintain any privy, water-closet, pigsty, hogpen, inclosure for poultry, barn, or barnyard, in which animals or poultry are kept, or drain from any building or the cellars thereof, where drainage or refuse therefrom will find its way into water used by a State fish hatchery. In case of the pollution of water used by a State fish hatchery, by substances known to be injurious to fish or fish food, it shall not be necessary to prove that such substances have actually caused the death of any particular fish.

SEC. 2. *Penalty.*—Any person violating any of the provisions of this act shall, on conviction thereof, be subject to a penalty of \$500.

[PUBLIC LAWS, 1912, P. 37.]

SEC. 13. *Placing poisonous substances in tidal tributaries of Delaware River between Trenton Falls and Birch Creek.*—(Section is identical with section 202, under "Fish and game," in the Compiled Statutes of 1910, except that it refers to those tributaries of the Delaware River between Trenton Falls and Birch Creek wherein the tide ebbs and flows.)

[PUBLIC LAWS, 1912, P. 44.]

SEC. 1. *State department of health to inspect oyster and clam beds.*—It shall be the duty of the * * * [Department] of Health of the State of New Jersey to inspect, or cause to be inspected, as often as said * * * [department] may deem necessary, the various oyster and clam beds and other places within the jurisdiction of or forming a part of the State of New Jersey from which oysters, clams, or other shellfish are taken to be distributed or sold for use as food for the purpose of ascertaining the sanitary conditions of such oyster and clam beds and other places, and the fitness of the oysters, clams, or other shellfish in such places or which are taken therefrom for use as food.

SEC. 2. *Beds dangerous to health condemned.*—If the State * * * [department] of health discovers that any oyster or clam bed or other place from which oysters, clams, or other shellfish are or may be taken for use as food is subject to pollution or to any other condition which may render the oysters, clams, or other shellfish in such places, or which may be taken therefrom, dangerous to health it shall be the duty of said * * * [department] to immediately condemn such oyster or clam bed or other place, and to prohibit the taking of oysters, clams, or other shellfish from such places for distribution or sale as food, and also to prohibit the sale, distribution, offering for sale, or having in possession with intent to distribute or sell any such oysters, clams, or other shellfish.

SEC. 3. *Evidence of use as food.*—For the purpose of this act the distribution, sale, offering for sale, or having in possession with intent to distribute or sell any oysters, clams, or other shellfish shall be prima facie evidence that such oysters, clams, or other shellfish were intended for use as food.

SEC. 4. *Polluting shellfish waters forbidden.*—No excremental or other polluting matter of any kind or character whatever shall be discharged into or placed in the waters, or placed or suffered to remain upon the banks of any stream or tributary thereof or body of water in which shellfish grow, or are or may be placed: *Provided, however,* That nothing in this section shall apply to the discharge of sewage or drainage into such stream, tributary, or body of water by municipalities of this State.

SEC. 5. *Regulations of State department of health.*—The State * * * [department] of health shall have power to adopt, promulgate, and enforce such rules and regulations as shall promote the purposes of this act, and * * * [It] shall also have power to make such specific orders regarding the growing and handling of shellfish and the disposal of polluting matter which may affect the purity of shellfish as * * * [It] may deem necessary to enforce the provisions of this act.

SEC. 8. *Penalty.*—Any person or corporation who shall violate any of the provisions of this act or any of the rules and regulations made under authority contained in this act, or who shall disobey any order made by the State * * * [department] of health under authority contained in section 5 of this act, or who shall gather with intent to distribute or sell for use as food any oysters, clams, or other shellfish from any oyster or clam bed or other place which has been condemned by the State * * * [department] of health in accordance with the provisions of section 2 of this act, or who shall distribute, sell, offer, or expose for sale or have in his possession for the purpose of sale any oysters, clams, or other shellfish taken from any oyster or clam bed or other place which has been condemned by said * * * [department], shall be liable to a penalty of \$100, such penalty to be recovered in an action of debt by and in the name of the * * * [department] of health of the State of New Jersey as plaintiff. * * *

SEC. 10. *Violation may be enjoined.*—Whenever any person shall violate any of the provisions of this act, it shall be lawful for the * * * [department] of health of the State of New Jersey, either before or after the institution of proceedings for the collection of the penalty imposed by this act for such violation, to file a bill in the court of chancery in the name of the State, at the relation of said board, for an injunction to restrain such violation and for such other and further relief in the premises as the court of chancery shall deem proper, but the filing of such a bill, nor any of the proceedings thereon, shall not relieve any party of such proceedings from the penalty prescribed by this act for such violation.

[PUBLIC LAWS, 1912, p. 557.]

SECTION 1 (as amended by Public Laws, 1913, p. 206).—*Department of conservation and development may acquire lands, water rights, etc., to conserve potable waters of State.*—The * * * [department of conservation and development] as a body corporate shall have power to acquire by gift, purchase, condemnation, or in any other lawful manner, any lands, water rights, and interests therein, whenever in its judgment it is advisable so to do, for the purpose of appropriating or conserving the potable waters of the State to the general and common use of the inhabitants thereof. * * *

SEC. 4. *Powers are additional—Governor's consent necessary.*—The powers herein conferred on the State * * * [department of conservation and development] are in addition to and not in limitation of any powers or authority heretofore conferred upon it, but shall only be exercised when consented to by the governor of the State of New Jersey, and no contract, obligation, bond, or mortgage executed in pursuance of the provisions hereof shall be valid unless

the governor of the State of New Jersey shall consent to the same, and every such contract, obligation, bond, or mortgage shall be subject to review by the supreme court as to the reasonableness and fairness of the terms and conditions thereof.

[PUBLIC LAWS, 1914, P. 550.]

SECTION 1. *Municipalities may protect water supply by paying toward sewer built by another municipality.*—In cities and other municipalities of this State having a public water supply derived from sources beyond the city limits, whenever it has become or may become necessary to protect such water from pollution, it shall be lawful for the common council, board of aldermen, or other governing body of said city or other municipality to pay to any municipality through which said water flows a portion of the cost toward the construction of a system of sewers in any such municipality: *Provided*, That the plans for said systems of sewers in any such municipality shall first have been approved by the State * * * [department] of health.

[PUBLIC LAWS, 1915, P. 426.]

SECTION 1. *Department of conservation and development established.*—A department of conservation and development is hereby established, and the same shall be governed by a board to be known as the "board of conservation and development."

SEC. 5. *Succeeds State water supply commission.*—The board of conservation and development shall succeed to and exercise all the rights and powers and perform all the duties now exercised and performed by or conferred and charged upon the State water supply commission * * *.

SEC. 13. *Same.*—Whenever, in any act, the words the "State water supply commission" * * * are used, the same shall be taken to be and to mean the board of conservation and development.

[PUBLIC LAWS, 1915, P. 517.]

SECTION 1. *Department of health established.*—The department of health is hereby established, and the same shall be governed by a board of eight members to be known as the "department of health of the State of New Jersey." * * *

SEC. 4. *Powers and duties.*—The powers and duties of the department of health of the State of New Jersey shall be as follows:

(a) It shall exercise all the powers and perform all the duties now exercised and performed by or conferred and charged upon the board of health of the State of New Jersey.

(c) It shall enact a State sanitary code which shall contain such rules and regulations, the observance of which in its opinion will promote health and prevent disease. * * *

SEC. 6. *Sanitary code to have force of law.*—The provisions of the sanitary code shall have the force and effect of law, and any violation of any portion thereof shall be punishable by a penalty of not less than \$25 nor more than \$100, to be sued for and recovered by the director of health or by the local health officer, local board of health, or other board or officer exercising the powers of a local board of health of any local jurisdiction within which such violations may occur * * *.

[PUBLIC LAWS, 1916, P. 128.]

SECTION 1. *State divided into two water-supply districts.*—The State of New Jersey * * * [is hereby] divided into two districts for the purposes of

municipal water supplies, one of which shall be known as the North Jersey water-supply district and the other as the South Jersey water-supply district. The North Jersey water-supply district shall consist of the counties of Sussex, Warren, Hunterdon, Passaic, Morris, Somerset, Bergen, Hudson, Essex, Union, and Middlesex, and the South Jersey water-supply district shall consist of the remaining counties of the State. Each of said districts shall be entitled to all of the authority and shall be subject to all the laws of this State concerning water districts so created.

[PUBLIC LAWS, 1916, P. 129.]

SECTION 1. *Commission to be appointed for two water-supply districts.*—There shall be appointed in the manner hereinafter provided a water-supply commission for each of the water-supply districts created by * * * [Public Laws, 1916, p. 128].

SEC. 2. *Membership.*—Each of said commissions shall consist of four members, who shall be residents of the water-supply district which they represent * * *.

SEC. 3. *Municipalities may ask for district water-supply commission.*—The body having charge of the water supply in any municipality of this State may, by resolution, determine that it is in the interests of said municipality that a district water-supply commission be appointed for the water-supply district wherein such municipality is located for the purpose of developing, acquiring, and operating a water supply or a new or additional water supply, for the use of said municipality and such other municipalities as may be authorized to join with it according to the terms of this act, and that a petition be presented to the governor of the State of New Jersey praying for the appointment of such a commission and setting forth in general terms the location and character of the water supply desired. The governor shall thereupon, within 30 days, appoint four residents of said water-supply district as such commissioners * * *.

SEC. 5. *Petition for water supply.*—The board having charge of the water supply of any municipality in a water-supply district for which a commission has been appointed as hereinbefore provided may, by resolution, petition the said commission for a water supply or a new or additional water supply * * *.

SEC. 6. *Hearing on proposition.*—Upon the filing of such petition the said district water-supply commission, after obtaining the consent of the State * * * [department of conservation and development] * * * shall fix a time and place for a public hearing upon said application * * *.

SEC. 7. *Other municipalities may join.*—Upon said hearing any municipality appearing may signify its desire to acquire an existing water supply or to obtain a new or additional water supply * * *.

SEC. 8. *Plans, estimates, etc.*—The said district water-supply commission shall thereupon proceed to formulate plans for obtaining a water supply or a new or additional water supply for said municipality and any other municipalities that may desire water from such joint water supply * * *.

SEC. 9. *Hearing on preliminary report; acceptance of contract.*—After the said district water-supply commission has submitted its preliminary report and form of contract to the municipalities interested, it shall notify said municipalities of a time and place for a hearing by such municipalities upon such contracts, respectively. At said hearing each municipality shall, through the board or body having charge of its water supply, signify its willingness to accept the terms of said contract as presented, or present such modifications for the consideration of said district water-supply commission as it may desire, or withdraw from further participation in the proposed water-supply development.

SEC. 10. *Final form of contract.*—After said hearing, said district water-supply commission shall present a final form of contract to be executed between the said commission and each of the municipalities which, at such hearing, shall signify its desire to participate in such water supply. * * *

SEC. 11. *Carrying out contract.*—When said contract or contracts are signed * * * the said district water-supply commission shall forthwith proceed to carry out the same. * * *

SEC. 17. *Control after completion.*—Upon the completion of such water-supply plant and works and appurtenances, the said district water-supply commission is authorized and directed to retain and have the sole control and charge of the said water-supply plants and works and appurtenances, except such part of the same as the said commission may convey to any one of the contracting municipalities * * *.

SEC. 20. *No state indebtedness.*—Nothing in this act contained shall be construed to authorize any district water-supply commissioner to incur any indebtedness on behalf of the State of New Jersey.

SEC. 22. *Powers granted to district water-supply commission in this act taken from State department of health.*—All acts and parts of acts heretofore passed inconsistent with the terms and provisions of this act or granting to the * * * [State department of health] the powers in this act granted to the boards of district water-supply commissions, when created as herein provided are hereby repealed * * *.

[PROHIBITION OF NUISANCES. REG. DEPT. OF H., MAY 2, 1916.]

REGULATION 1. No person or private or municipal corporation shall maintain or permit to be maintained anything whatsoever which is a hazard or a danger to human health.

REG. 2. No person or private or municipal corporation shall maintain any well or other supply of water used for drinking or household purposes which is polluted in any manner that may render such water injurious to health, or which is so situated or constructed that it may become so polluted.

REG. 3. No person or private or municipal corporation shall maintain, use, or permit to be used any privy or other receptacle for human excrement unless such privy or other receptacle is so constructed and maintained that flies can not gain access to the excremental matter contained therein and unless such excremental matter shall at all times be prevented from flowing over or upon the surface of the ground. Every privy or other receptacle for human excrement located within 100 feet of any stream, the waters of which are used for drinking or domestic purposes, shall be provided with a water-tight vault.

REG. 4. No person or private or municipal corporation shall permit any human excrement, or material containing human excrement, to remain in the surface of the ground; nor shall such excremental matter or material containing such excremental matter be buried or otherwise disposed of within 100 feet of any stream, well, lake, spring, or other source of water used for drinking or domestic purposes; nor shall any such material be deposited in any place where it is likely to gain access to such waters: *Provided, however,* That this regulation shall not apply to effluents from sewage disposal plants which have been or hereafter may be approved by the State department of health.

REG. 5. No person or private or municipal corporation shall maintain or permit to be maintained any accumulation of decomposing animal or vegetable matter in which fly larvae exist on any premises upon which is located any hotel, boarding house, lodging house, restaurant, or any other establishment in which

foods intended for sale or distribution are prepared, handled, or sold, or at any point on any other premises within 250 feet of any dwelling occupied by another.

Reg. 6. No person or private or municipal corporation shall maintain or permit to be maintained any pool, pond, ditch, stream, or other body of water, or any cistern, privy vault, cesspool, rain barrel, or other receptacle containing water in which mosquito larvae exist.

Reg. 7. These regulations shall take effect on June 1, 1916.

NEW MEXICO.

[STATUTES ANNOTATED, CODIFICATION, 1915.]

564. *Bodies not to be buried near stream.*—It shall be unlawful in the State of New Mexico for any person or persons, or for any order or society of persons, or for any corporation or corporations, to bury or inter their dead, or use any land or lands in any way whatsoever as a burial place or a place of interment for such dead within 50 yards from either side of the bank or border of any stream or streams or any river or rivers of running water.

565. *Penalty.*—Any person or persons guilty of violation of the provisions of the preceding section shall on complaint and conviction thereof, for each and every offense so committed, be subject to a fine of not less than \$50 and not more than \$500 or imprisonment in the county jail, not less than 60 days and not more than six months, or both; one-half of all fines so collected shall be given to the informant and the balance shall be turned over to the county treasurer.

1482. *Poisoning springs, etc.*—If any person * * * shall willfully poison any spring, well, or reservoir of water, with such intent [that of killing or injuring any other person], he shall be punished by imprisonment in the State penitentiary for life.

1583. *Penalty for bathing in or polluting reservoirs, etc.*—Any person who shall bathe in, or willfully cast any filth in, any reservoir used for supplying water for domestic use shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$10 or not more than \$25.

1741. *Depositing filth near stream.*—It shall be unlawful for any person or persons, to cast, throw out or deposit any offal, refuse matter, putrid or deleterious substance, or the dead body or carcass of any animal, * * * within 500 yards of any well, spring, arroyo or ditch, or any arroyo, creek or stream of water used for drinking purposes, and any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than \$3 nor more than \$80.

1742. *Pollution of streams, etc.*—It is hereby made unlawful for any person to cast the dead body of any animal or fowl, or any refuse matter, such as tin cans, paper, ashes, bones, or other garbage into any running stream, spring, lake, pond, reservoir, ditch, or watercourse, or to run or empty any sewer or other foul substance into the same, or in any other manner or means to pollute or foul the said water so as to render the same offensive or dangerous to the health of the inhabitants of any community or of any person having the right to use the same for drinking or domestic purposes, or that may render said waters unfit or unhealthy for watering stock. But it shall be the duty of every person outside of incorporated towns, cities, or villages to destroy all domestic refuse and garbage by burning the same; any violation of this section shall be considered a misdemeanor and punished as provided by law.

1743. *Pollution in above manner termed a nuisance.*—The polluting of waters in any of the manners specified in the foregoing section is hereby declared to be a public nuisance, which shall be immediately removed by the person or persons¹ creating the same, upon the demand of any public officer or of any person or persons who may have a right to the use of said waters.

1744. *Penalty.*—Any person or persons violating any of the provisions of section 1742 may be tried therefor before any justice of the peace of the county where the offense is committed, and upon conviction thereof shall be punished by a fine in any sum not less than \$10 nor more than \$100, or by imprisonment in the county jail for any period of time not less than 10 days nor more than 60 days, or by both fine and imprisonment. And in addition thereto the justice of the peace shall direct the sheriff of the county or the constable of the precinct to remove such nuisance, at the expense of the person or persons creating the same, which said expenses shall be taxed as other costs against the person or persons so offending, and shall be collected in the manner provided by law for the collection of costs in criminal cases.

2428. *Pollution of water by sawmills—poisoning fish.*—It shall be unlawful for the owner or owners of any sawmill, or any of the employees thereof, or any other person or persons whomsoever, to deposit, throw, or in any way permit to pass into any natural stream, or any lake wherein are living fish, any sawdust, or any other substance that will or may tend to the destruction or driving away of any such fish from any such water; and it shall be unlawful to use for the killing or catching of any fish any poisonous, deleterious, or stupefying drug, * * * at any time; and every person violating any of the provisions of this section shall upon conviction thereof be punished by a fine of not less than \$50 nor more than \$150, or by imprisonment for not less than three months nor more than one year, or by both such fine and imprisonment.

3504. *Council's power to prevent pollution of water supply.*—The city council and board of trustees in towns shall have the following powers:

Sixty-ninth. Cities and towns shall have power to construct or authorize the construction of such water works, without their limits, and, for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works, and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same, and over the stream or source from which the water is taken, for 5 miles above the point from which it is taken, and to enact all ordinances and regulations necessary to carry the power herein conferred into effect.

3756. *Preventing pollution of water in towns and villages.*—They [towns and villages] shall have the power, by ordinance, to provide a supply of water by the construction and regulation of wells, pumps, reservoirs, ditches, and to prevent the unnecessary waste and spreading or pollution of water within the corporate limits, * * * and they may go beyond their corporate limits and prevent or punish any pollution or fouling or injury to the stream or source of water which is supplied to said town.

4505. *Regulations of New Mexico Board of Health.*—The board of health [State] shall make such regulations respecting nuisances, sources of filth, and causes of sickness, applicable to any county, city, town, or village in the State or any part of any such county, city, town, or village, as the peculiar conditions in such county, city, town, or village may in the judgment of said board of health at any time require.

¹ Text reads "person or person."

4621. *Violations of regulations.*—Any person violating any of the provisions of * * * [sec. 4595] or any of the rules and regulations adopted by said board [State board of health], if punishment for the same is not otherwise provided for in this article, shall be guilty of a misdemeanor and after conviction shall be punished by a fine of not less than \$25 and not more than \$100, and may be prosecuted either by indictment or information or before any justice of the peace in the county in which such offense is committed.

NEW YORK.

[CONSERVATION LAWS CHAP. 647, LAW OF 1911.]

2 (as amended by Laws of 1917, chap. 486). *Conservation department.*—The conservation department is hereby created and shall have three divisions. The department shall continue to be in charge of a commission to be known as the conservation commission * * *.

4 (as amended by Laws of 1915, chap. 318). *Division of waters and division of fish and game.*—There shall be in the department * * * a division of waters under which shall be administered all laws relating to State jurisdiction over water storage and hydraulic development, water supply, river improvement, drainage, irrigation and navigation of waters outside the canals and a division of fish and game under which shall be administered all laws relating to State jurisdiction over fish and game and for the propagation thereof, including shellfish. * * * The division engineer shall be the chief and administrative head of the division of waters. The chief game protector shall be the chief and administrative head of the division of fish and game.

21. *Commission to investigate water resources with reference to water supply.*—It shall be the duty of the commission to continue investigations of the water resources of the State, including the systematic gaging of rainfall and stream flow throughout the State, so as to complete a comprehensive system for the entire State, for the conservation, development, regulation, and use of the waters in each of the principal watersheds of the State with reference to the accomplishment of the following public uses and purposes:

1. The prevention of floods and the protection of the public health and safety in the watershed.

2. The supply of pure and wholesome water from the watershed to municipalities and the inhabitants thereof and the disposal of sewage.

(3-5 relate to drainage, irrigation, water power, and navigation.)

182 (as amended by Laws of 1916, chap. 521). *Penalties.*—* * * (3) A person who violates any of the provisions of sections * * * 247 or 248 thereof shall be guilty of a misdemeanor, and in addition thereto is liable as follows: To a penalty of \$500 and an additional penalty of \$10 for each fish taken, killed, or possessed in violation thereof.

247 (added by laws of 1912, chap. 318, and amended by Laws of 1913, chap. 508). *Pollution of streams by trade wastes prohibited.*—No dyestuffs, coal tar, refuse from a gas house, cheese factory, creamery, condensery, or cannery, factory, sawdust, shavings, tan bark, lime, or other deleterious or poisonous substance shall be thrown or allowed to run into any waters, either private or public, in quantities injurious to fish life inhabiting the same or injurious to the propagation of fish therein.

248 (added by Laws of 1912, chap. 318). *Pollution of waters used by State fish hatcheries prohibited.*—No person shall erect or maintain any privy, water-closet, pigsty, hogpen, inclosure for poultry, barn or barnyard in which animals or poultry are kept, or drain from any building or the cellar thereof,

where drainage or refuse therefrom will flow into or find its way into water used by any fish hatchery operated by the State, or into any pond, creek, or stream used in connection therewith. Every such privy, water-closet, pigsty, hogpen, inclosure, barn, barnyard, and drain is hereby declared to be a public nuisance and may be summarily abated by the commission. No person shall place sewage or other matter injurious to fish where the same can find its way into water used by any fish hatchery operated by the State or suffer the same to be done from, over, or through premises owned or occupied by him.

310, subdivision 1 (as amended by Laws of 1913, chap. 706). *Sanitary inspection of shellfish grounds.*—It shall be the duty of the supervisor within one year from the passage of this act, or within such further time as it may require to complete the same and annually thereafter, to cause to be inspected and examined by a competent bacteriologist, appointed by the commission, all shellfish grounds and other places within the State from which shellfish are taken, planted, cultivated, or handled, with a view to ascertaining the sanitary condition of such shellfish grounds and other places, and the fitness of the shellfish in such places, or which may be taken therefrom, for use as articles of food, except that shellfish grounds used exclusively for the growing or cultivating of seed oysters shall not be subject to the sanitary examination and inspection provided for * * * [above].¹

325 (added by Laws of 1912, chap. 318). *Pollution of water by manufacturing.*—Sludge, acid, or refuse from oil works, sugar houses, or other manufacturing, except refuse from the manufacture of oil from menhaden or other fish, sewage or any substance injurious to oyster culture or fish, shall not be placed or allowed to run into waters of the State in the marine district, and upon it appearing to the satisfaction of the supervisor that oyster beds or such waters have become polluted from one or more of these causes, it shall be his duty to cause complaint to be made in a criminal action against the person or persons so offending, and such person or persons so offending shall also be liable in damages to persons injured, in addition to the penalties hereinafter provided.

326 (added by Laws of 1912, chap. 318). *Garbage not to be thrown into certain waters.*—Garbage, clinders, ashes, oils, acids, sludge, or refuse of any kind shall not be thrown, dumped, or permitted to run, from any vessel into any bay or harbor, or into Long Island Sound within 2 miles of the shore west of a line drawn from Old Field Point due north to the boundary line between New York and Connecticut.

520. *General powers of commission in relation to water supply.*—The commission shall have the powers and perform the duties in relation to the supply of potable waters for the various municipalities, civil divisions and inhabitants of the State, set forth in this article [art. 9, water supply], and as may be further provided by law.

521. *Commission to approve plans for waterworks.*—No municipal corporation or other civil division of the State, and no board, commission, or other body of or for any such municipal corporation or other civil division of the State shall, nor shall any person or waterworks corporation engaged in supplying or proposing to supply the inhabitants of any municipal corporation or other civil division of the State with water, after this chapter takes effect, have any power to acquire, or to take a water supply or an additional water supply, or to take or condemn lands for any new or additional sources of water supply, until such person, corporation, or civil division has first submitted

¹ It seems unnecessary to quote further from the laws relating to sanitary condition of shellfish.

the maps, plans, and profiles therefor to the commission of conservation, as hereinafter provided,¹ and until said commission shall have approved the same, or approved the same with such modifications as it may determine to be necessary, as hereafter provided. Approval shall not be necessary * * * of any plans or work for the extension of supply or distributing mains or pipes of a municipal water-supply plant into and for the purpose of supplying water in any territory within the limits of the municipality owning such plant, including territory which has not been heretofore supplied with water by such plant.

523. *Approval of work.*—No new water-supply system, built in accordance with plans hereafter approved by the commission, shall be operated until the work has been approved by it.

525. *Sewage disposal as affecting potable waters.*—The commission shall report the present disposition of sewage of each municipal corporation and other civil division of the State, and, if necessary, of adjoining States, with special reference to said disposition affecting the various municipal corporations and other civil divisions of the State in relation to the water supply of this State. Said commission shall also report the advisability of, the time required for, and the expenses incident to, the construction of a State system of water supply and for a State system for the disposition of sewage, if necessary, for all or any of the municipal corporations and other civil divisions of this State, and make such recommendations connected with the subjects of said investigations herein provided for as said commission shall determine. In said investigation concerning either the water supply or disposition of sewage, said commission shall, so far as possible, make use of all reports and surveys in regard thereto which have heretofore been made. Wherever, by any provision of law, the consent or approval of any State board, officer, or commission is required for the construction of any sewage system or sewage disposal works, the further approval thereof by the conservation commission shall be required.

[NAVIGATION LAW; CONSOLIDATED LAWS, 1909, CHAP. 37.]

52 (as amended by Laws of 1915, chap. 402). *Deposit of dead animals or refuse in Lake George prohibited.*—No person or persons shall drain, deposit, or cast any dead animal, carrion, offal, excrement, garbage, or other putrid or offensive matter into the waters of Lake George or Schroon Lake in this State * * *. This section shall not be construed to prevent the deposit of the usual waste or drainage from factories, * * *. Every person violating any provision of this section shall be guilty of a misdemeanor punishable by a fine of \$100, or by imprisonment in a penitentiary or county jail for not more than two months, or by both, in the discretion of the court, for each offense, and the district attorney of the county in which the offense is committed or exists, is authorized and directed to prosecute the offender or offenders hereunder and directed to pay the fine or fines collected to the treasurer of the county in which the offense is committed or exists, to be applied in reduction of the annual county taxes. * * *

53. *Deposit of dead animals and refuse in the St. Lawrence River.*—No person shall throw or cast any dead animal, carrion, or offal, or other putrid or offensive matter in the waters of the St. Lawrence River within the jurisdiction of this State; * * *. Every person violating any provision of this section shall forfeit to the people of the State the sum of \$50 for every such violation and shall be liable to the owner and occupant of any premises injuriously affected by such violation for all damages sustained thereby.

¹ Refer to Law (Cumulative Supplement 1910-1913, to Consolidated Laws, p. 423) for further details of procedure.

55. *Deposits in Racket River, etc.*—No corporation, company, person, or persons shall deposit or put into the Racket, Oswegatchie, or East Branch of the St. Regis Rivers, in this State, any buttings, edgings, slabs, or other débris except sawdust and planer shavings from any mills engaged in the manufacture of shingles, wood, or lumber upon or adjacent to such rivers to be floated down the same. Every person violating any provision of this section shall forfeit for every such violation the sum of \$50, to be sued for and recovered by any person aggrieved thereby for his own use and benefit.

[PENAL LAW; CONSOLIDATED LAWS, 1909, CHAP. 40.]

1425. *Malicious injury of ice prohibited.*—A person who willfully:

7. Maliciously injures any ice upon any water from which ice is taken as an article of merchandise with intent to injure the owner thereof, or enters or skates upon any pond or body of water not navigable, kept and used for the purpose of taking ice therefrom as an article of merchandise, and upon or adjoining which a notice has been placed in a conspicuous position forbidding such entry, and stating the purpose for which said body of water is kept or used, or puts or throws upon or into any such pond or body of water any stick, stone, or other substance to the injury of the ice or water;

15. * * *. Shall be deemed guilty of a misdemeanor.

20. *Violation of statute which imposes no penalty is a misdemeanor.*—Where the performance of any act is prohibited by a statute, and no penalty for the violation of such statute is imposed in any statute the doing such act is a misdemeanor.

1740. *Willful violation of health laws.* * * * (2) A person who willfully violates any provision of the health laws, or any regulation lawfully made or established by any public officer or board under authority of the health laws, the punishment for violating which is not otherwise prescribed by those laws, or by this chapter [Penal Law, public-health chapter], is punished by imprisonment not exceeding one year, or by a fine not exceeding \$2,000, or by both.

1754. *Putting noisome or unwholesome substances along water route.*—A person who deposits, leaves, or keeps, on or near a highway or route of public travel, either on the land or on the water, any noisome or unwholesome substance; or establishes, maintains,¹ or carries on, upon or near a public highway or route of public travel, either on the land or on the water, any business, trade or manufacture, which is noisome or detrimental to public health, is guilty of a misdemeanor, punishable by a fine of not less than \$100, or by imprisonment not less than three nor more than six months, or both.

1758. *Contamination of salt wells.*—A person who willfully places, introduces, or causes to flow or enter into any spring, brook or body of water, which is used in the manufacture of salt, or into any salt well, or salt mine, or into any cavity or reservoir beneath the surface of the earth from which salt or brine is taken or used in the manufacture of salt, any impure or deleterious substance or thing whatsoever, which is liable to pollute the waters thereof, or the brine or salt taken or manufactured therefrom, provided that this act shall not interfere with any existing system of drainage or sewerage, is punishable by imprisonment in a penitentiary or State prison for not more than five years or by a fine of not more than \$2,000, or by both such fine and imprisonment.

1759. *Refouling public waters with gas tar.*—A person who throws or deposits gas tar, or the refuse of a gas house or gas factory, or offal, refuse, or any other noxious, offensive, or poisonous substance into any public waters, or into

¹ Text reads "maintain."

any sewer or stream running or entering into such public waters, is guilty of a misdemeanor.

1700. *Poisoning water supplies.*—* * * A person who willfully poisons any spring, well or reservoir of water, is punishable by imprisonment in a State prison not exceeding 10 years, or in a county jail not exceeding one year, or by a fine not exceeding \$500, or both such fine and imprisonment.

1937. *Punishment of misdemeanors when not fixed by statute.*—A person convicted of a crime declared to be a misdemeanor, for which no other punishment is especially prescribed by this chapter, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment in a penitentiary, or county jail, for not more than one year, or by a fine of not more than \$500, or by both.

[PUBLIC HEALTH LAW; CONSOLIDATED LAWS, 1909, CHAP. 45.]

2b (added by Laws of 1913, chap. 559). *Sanitary code.*—The public-health council shall have power by the affirmative vote of a majority of its members to establish and from time to time amend sanitary regulations, hereinafter called the sanitary code, without discrimination against any licensed physicians. The sanitary code may deal with any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York, and with any matters as to which jurisdiction is hereinafter conferred upon the public health council. * * * The provisions of the sanitary code shall have the force and effect of law and any violation of any portion thereof may be declared to be a misdemeanor. No provision of the sanitary code shall relate to the city of New York or any portion thereof, and every provision of the sanitary code shall apply to and be effective in all portions of the State except the City of New York unless stated otherwise.

2c (added by Laws of 1913, chap. 559). *Enforcement of sanitary code.*—The provisions of the sanitary code shall, as to matters to which it relates, and in the territory prescribed therefor by the public health council, supersede all local ordinances heretofore or hereafter enacted inconsistent therewith. * * *

The actions, proceedings, and authority of the State health department in enforcing the provisions of the public health law and sanitary code applying them to specific cases shall at all times be regarded as in their nature judicial, and shall be treated as *prima facie* just and legal. All meetings of said public health council shall in every suit and proceeding be taken to have been duly called and regularly held, and all regulations and proceedings to have been duly authorized unless the contrary be proved. * * *

17 (added by Laws of 1915, chap. 384, and amended by Laws of 1916, chap. 372). *Violation of health laws or regulations.*—Any person violating, disobeying, or disregarding the terms of any lawful notice, order, or regulation prescribed by the State commissioner of health or by the sanitary code, or any provision of the public health law or sanitary code, for which a civil penalty is not otherwise expressly prescribed by law, shall be liable to the people of the State for a civil penalty of not to exceed \$50, for every such violation. The said penalty may be recovered by an action brought by the State commissioner of health in any court of competent jurisdiction. Nothing in this section contained shall be construed to alter or repeal any existing provision of law declaring such violations or any of them misdemeanors or felonies or prescribing the penalty therefor.

79 (as amended by Laws of 1915, chap. 665). *Regulations in regard to protection of potable waters from contamination.*—The State department of health may make rules and regulations for the protection from contamination of any

or all public supplies of potable waters and their sources within the State, and the commissioner of water supply, gas, and electricity of the city of New York, and the board of water supply of the city of New York may make such rules and regulations, subject to the approval of the State department of health, for the protection from contamination of any or all public supplies of potable waters and their sources within the State where the same constitute a part of the source of the public water supply of said city. If any such rule or regulation relates to a temporary source or act of contamination, any person violating such rule or regulation shall be liable to prosecution for misdemeanor for every such violation, and on conviction shall be punished by a fine not exceeding \$200, or imprisonment not exceeding one year, or both. If any such rule or regulation relates to a permanent source or act of contamination, said department may impose penalties for the violation thereof or the noncompliance therewith, not exceeding \$200 for every such violation or noncompliance. Every such rule or regulation shall be published at least once in each week for six consecutive weeks, in at least one newspaper of the county where the waters to which it relates are located. The cost of such publication shall be paid by the corporation or municipality benefited by the protection of the water supply, to which the rule or regulation published relates. * * *

71 (as amended by Laws of 1915, chap. 665). *Inspection of water.*—The officer or board having by law the management and control of the potable water supply of any municipality, and in the city of New York, the commissioner of water supply, gas, and electricity, and the board of water supply of the city of New York, or the corporation furnishing such supply, may make such inspection of the sources of such water supply as such officer, board, or corporation deems advisable and to ascertain whether the rules or regulations of the State department and of the commissioner of water supply, gas, and electricity of the city of New York, and of the board of water supply of the city of New York, are complied with, and shall make such regular or special inspections as the State commissioner of health, or the commissioner of the department of water supply, gas, and electricity of the city of New York, or the board of water supply of the city of New York, may prescribe. If any such inspection discloses a violation of any such rule or regulation relating to a temporary or permanent source or act of contamination, such officer, board or corporation shall cause a copy of the rule or regulation violated to be served upon the person violating the same, with a notice of such violation. If the person served does not immediately comply with the rule or regulation violated, such officer, board, or corporation, except in a case concerning the violation of a rule or regulation relating to a temporary or permanent source or act of contamination affecting the potable water supply of the city of New York, shall notify the State department of the violation, which shall immediately examine into such violation; and if such person is found by the State department to have actually violated such rule or regulation, the commissioner of health shall order the local board of health of such municipality wherein the violation or noncompliance occurs, to convene and enforce obedience to such rule or regulation.

If the local board fails to enforce such order within 10 days after its receipt, the corporation furnishing such water supply or the municipality deriving its water supply from the waters to which rule or regulation relates, or the State commissioner of health or the local board of health of the municipality wherein the water supply protected by these rules is used, or any person interested in the protection of the purity of the water supply, may maintain an action in a court of record which shall be tried in the county where the cause of action arose against such person, for the recovery of the penalties incurred by such violation, and for an injunction restraining him from the continued violation

of such rule or regulation. If the person served does not comply within five days with the rule or regulation violated, in case such rule or regulation relates to a temporary or permanent source or act of contamination affecting the potable water supply of the city of New York, the commissioner of water supply, gas, and electricity of said city, or the board of water supply of the city of New York, may summarily enforce compliance with such rule or regulation, and may summarily abate or remove the cause of the violation of such rule or regulation or the nuisance so created, and to that end may employ such force as may be necessary and proper: *Provided, however,* That no building or improvements shall be removed, disturbed, or destroyed by the said commissioner of water supply, or the said board of water supply, until he or they shall cause measurements to be made of the buildings and photographs of the exterior views thereof, which measurements and photographs shall be at the disposition thereafter of the owners or their attorneys, and failure to exercise such right of abatement shall not be deemed a waiver thereof. Failure to comply within five days with such rule and regulation shall further entitle the city of New York to maintain an action in any court having jurisdiction thereof for the recovery of the penalties incurred by such violation and for an injunction restraining the person or persons violating such rule or regulation, or creating or continuing such nuisance, from the continued violation of such rule or regulation or continuance of such nuisance, the remedy by abatement being not exclusive.

73 (as amended by Laws of 1915, chap. 665), *Municipality or corporation owning water works benefited must make improvements in water works or sewage disposal plants.*—When the State department of health, or the commissioner of water supply, gas, and electricity of the city of New York, or the board of water supply of the city of New York, shall, for the protection of a water supply from contamination, make orders or regulations the execution of which will require or make necessary the construction and maintenance of any system of sewage, or a change thereof, in or for any village or hamlet, whether incorporated or unincorporated, or the execution of which will require the providing of some public means of removal or purification of sewage, the municipality or corporation owning the water works benefited thereby shall, at its own expense, construct and maintain such system of sewage, or change thereof, and provide and maintain such means of removal and purification of sewage and such works or means of sewage disposal as shall be approved by the State department of health, and for that purpose said municipality or corporation may acquire, under the general condemnation law, the necessary real estate or interest therein whether now used for public or private purposes. When the execution of any such regulations of the State department of health, or the commissioner of water supply, gas, and electricity of the city of New York, or the board of water supply of the city of New York, will occasion or require the removal of any building or buildings, the municipality or corporation owning the water works benefited thereby shall, at its own expense, remove such buildings and pay to the owner thereof all damages occasioned by such removal. When the execution of any such regulation will injuriously affect any property the municipality or corporation owning the water works benefited thereby shall make just and adequate compensation for the property so taken or injured and for all injuries caused to the legitimate use or operation of such property. Until such construction or change of such system or systems of sewerage, and the providing of such means of removal or purification of sewage, and until such works or means of sewage disposal and the removal of any building are so made by the municipality or corporation owning the water works to be benefited thereby at its own expense, and until, except in the case of a municipality, the corporation owning the water works benefited shall make just and

adequate payment for all injuries to property and for all injuries caused to the legitimate use or operation of such property, there shall be no action or proceeding taken by any such municipality, officer, board, person, or corporation against any person or corporation for the violation of any regulation of the State department of health under this article [Art. V, "Potable Waters"], and no person or corporation shall be considered to have violated or refused to obey any such rule or regulation. * * *

73a (added by Laws of 1915, chap. 665). *Limitation of sanitary control of board of water supply of New York City.*—Nothing contained in this chapter [chap. 45, public health law] shall extend the sanitary control of the board of water supply of the city of New York, beyond the sources of potable water supply, tributary to the Catskill Aqueduct; and the powers granted by this chapter to the board of water supply of the city of New York shall cease at the time of the transference of the jurisdiction over the source of water supply, by the board of water supply to the commissioner of water supply, gas, and electricity of the city of New York; and at no time shall the commissioner of water supply, gas, and electricity of the city of New York and the board of water supply of said city have or exercise concurrent powers or sanitary control over the sources of potable water supply tributary to the Catskill Aqueduct.

74. *Discharge of sewage into Wallkill Creek prohibited.*—No person or corporation shall permit the discharge or escape of any sewage, or other matter deleterious to public health, or destructive to fish, or throw or cast any dead animal, carrion, or offal, or other putrid or offensive matter into the waters of the Wallkill Creek, in the counties of Ulster and Orange. Any person violating any provision of this section shall forfeit to the county where the violation occurred the sum of \$50 for every such violation.

75. *Discharge of sewage into the Susquehanna near Binghamton prohibited.*—No person or corporation shall cause to fall, flow, or discharge into the Susquehanna River or any of its tributaries, between the Rock Bottom Dam in such river at the city of Binghamton, and a point 1 mile east of the bridge that crosses such river at Conklin, any sewage matter, or other foul, noxious, or deleterious, solid or liquid matter, or any matter that may be declared such by the board of health of any municipality adjacent to such river within such limit. The board of health of any such municipality shall examine into any alleged offense against this section and cause the same to be abated, if found to exist. Every person violating any provision of this section shall forfeit to the municipality having a local board of health where the violation occurs the sum of \$25 for the first day when the violation takes place, and the sum of \$10 for every subsequent day that such violation is repeated or continued.

76 (as amended by Laws of 1911, chap. 553). *Prohibiting of pollution; exceptions.*—No person, corporation, or municipality shall place or cause to be placed, or discharge or cause to be discharged into any of the waters of this State, in quantities injurious to the public health, any sewage, garbage, offal, or any decomposable or putrescible matter of any kind or the effluent from any sewage-disposal plant, or any substance, chemical or otherwise, or any refuse or waste matter, either solid or liquid, from any sewer or drainage system, or from any shop, factory, mill, or industrial establishment; unless express permission to do so shall have been first given in writing by the State commissioner of health as provided in this article, except as hereinafter provided. But this section shall not prevent the discharge of sewage from any public sewer system owned and maintained by a municipality until an order prohibiting same shall be made as hereinafter provided, or the discharge of refuse or waste matter from any shop, factory, mill, or industrial establishment, if such sewer system was in operation and was discharging sewage, or such shop, factory, mill, or

Industrial establishment was in operation and discharging refuse or waste matter into any of the waters of this State on or prior to May 7, 1903, and such municipality or the proprietor of such shop, factory, mill, or industrial establishment secured exemption from this section by filing a report with the State commissioner of health in accordance with law, nor to any extension or modification of such shop, factory, mill, or industrial establishment, or reconstruction thereof, provided the refuse or waste matter discharged therefrom is not materially changed or increased; but this exception shall not permit any increase in the discharge of such sewage, or in the discharge of refuse or waste matter from any shop, factory, mill, or industrial establishment, nor shall it permit the discharge of sewage from a sewer system which shall be extended, modified, or reconstructed subsequent to said date.

76a (added by laws of 1911, chap. 553). *State commissioner of health may order discontinuance of pollution.*—Whenever the State commissioner of health shall determine upon investigation that sewage from any city, village, town, building, steamboat or other vessel, or property, or any garbage, offal, or any decomposable or putrescible matter of any kind is being discharged into any of the waters of the State, which shall include all streams and springs and all bodies of surface and ground water, whether natural or artificial, within or upon the boundaries of the State, and when, in the opinion of the State commissioner of health, such discharge is polluting such waters in a manner injurious to or so as to create a menace to health, or so as to create a public nuisance, he may order the municipality, corporation, or person so discharging sewage, refuse, or other matter to show cause before him why such discharge should not be discontinued. A notice shall be served on the municipality, corporation, or person so discharging sewage, refuse, or other matter directing such municipality, corporation, or person to show cause before the said State commissioner of health on a date specified in such notice why an order should not be made directing the discontinuance of such discharge. Such notice shall specify the time when and place where a public hearing will be held by the State commissioner of health and notice of such hearing shall be published at least twice in a newspaper of the city, village, town, or county where such discharge occurs and shall be served personally or by mail at least 15 days before said hearing and in the case of a municipality or a corporation such service shall be upon an officer thereof. The State commissioner of health shall take evidence in regard to said matter and he may issue an order to the municipality, corporation, or person responsible for such discharge, directing that within a specified period of time thereafter such discharge be discontinued and such proper method of treatment or disposal of such sewage, refuse, or waste matter be adopted as will permanently obviate such pollution of said waters by the municipality, corporation, or person responsible therefor, and as such shall be approved by said commissioner. Such order shall not be valid until approved by the governor and attorney general, and when so approved it shall be the duty of the attorney general to enforce such order. Such means or method for the treatment or disposal of sewage, refuse, or other matter must be executed, completed, and put in operation within the time fixed in the order. The State commissioner of health shall have authority to require from the officials and persons responsible for the execution of such orders satisfactory evidence at specified times of proper progress in the execution of such orders, and may stipulate and require that certain definite progress shall be made at certain definite times prior to the final date fixed in the order. For the purpose of this article sewage shall be defined as any substance, solid or liquid, that contains any of the waste products or excrementitious or other wastes or wash-

ings from the bodies of human beings or animals. But this section shall not apply to refuse or waste matter from any shop, factory, mill, or industrial establishment not containing sewage as hereinbefore defined.

77 (amended by Laws of 1911, chap. 553). *Construction of sewerage systems.*—Upon application duly made to the State commissioner of health by the public authorities having by law the charge of the sewer system of any municipality, the State commissioner of health shall have power to consider the case of a sewer system otherwise prohibited by section 76 from discharging sewage into any of the waters of the State, and whenever in his opinion the general interests of the public health would not be endangered thereby he may issue a permit for the discharge of sewage from any such sewer system into any of the waters of the State, and may stipulate in the permit, modifications, regulations, and conditions on which such discharge may be permitted. Such application must be made in a form required by the State commissioner of health and he may require such plans and information to be furnished him as he deems advisable. The plans for the construction of any sewer system or sewage disposal plant or for the extension, reconstruction, or modification of sewers, sewer systems, or sewage disposal plants shall be so submitted with application for their approval, and a permit as herein provided. Such permit before being operative shall be recorded in the county clerk's office of the county wherein the outlet of the said sewer system is located, and a copy of the permit shall be transmitted by the State commissioner of health to the board of health of the municipality wherein the outlet of said sewer system is located.

78. *Permission to discharge refuse or waste matter from industrial establishments.*—Upon application duly made to the State commissioner of health by the proprietor, lessee, or tenant of any shop, factory, mill, or industrial establishment from which the discharge of refuse or waste matter into any of the waters of the State is otherwise prohibited by section 76, the State commissioner of health shall have power to consider the case of the said shop, factory, mill, or industrial establishment, and whenever the public health and purity of the waters shall warrant it he shall issue a permit for the discharge of refuse or waste matter from such shop, factory, mill, or industrial establishment into any of the waters of the State, and may stipulate in the permit such modifications, regulations, and conditions as the public health may require. Such permit before being operative shall be recorded in the county clerk's office of the county where such shop, factory, mill, or industrial establishment is located and a copy of such permit shall be transmitted by the State commissioner of health to the board of health of the municipality wherein the outlet discharging refuse or waste matter from such shop, factory, mill, or industrial establishment shall be located.

79. *Plans for refuse discharge pipe must be submitted.*—Before any conduit or discharge pipe, or other means of discharging or casting any refuse or waste matter from any shop, factory, mill, or industrial establishment not constructed or in process of construction on May 7, 1903, shall be put in or constructed for the purpose of discharging any refuse or waste matter therefrom into any waters in this State, the plan or plans therefor, together with a statement of the purpose for which the same is to be used, shall be submitted to the commissioner. If the same is not detrimental to the public health he shall issue a permit therefor to the applicant. No such conduit, discharge pipe or other means of discharging or casting any refuse or waste matter from any such shop, factory, mill, or establishment into any of the waters of this State shall be put in or constructed before such permit is granted, and if put in or constructed, the person putting in or constructing or maintaining the same shall forfeit to

the people of the State \$5 a day for each day the same is used or maintained for such purpose, to be collected in an action brought by the commissioner. He may also maintain an action in the name of the people to restrain a violation of this section.

80. *Revocation of permit.*—Every such permit for the discharge of sewage from a sewer system or for the discharge of refuse or waste matter from a shop, factory, mill, or industrial establishment shall, when necessary to conserve the public health, be revocable or subject to modification or change by the State commissioner of health on due notice after an investigation and hearing and an opportunity for all interested therein to be heard thereon being served on the public authorities of the municipality owning and maintaining the sewage system, or on the proprietor, lessee or tenant of the shop, factory, mill, or industrial establishment. The length of the time after receipt of the notice within which the discharge of sewage or of refuse or waste matter shall be discontinued may be stated in the permit but in no case shall it exceed two years in the case of a sewer system, nor one year in the case of a shop, factory, mill, or industrial establishment, and if the length of time is not specified in the permit, it shall be one year in the case of a sewer system and six months in the case of a shop, factory, mill, or industrial establishment. On the expiration of the period of time prescribed after the service of a notice of revocation, modification, or change from the State commissioner of health the right to discharge sewage or refuse or waste matter into any of the waters of the State shall cease and terminate and the prohibition of this act against such discharge shall be in full force as though no permit had been granted, but a new permit may thereafter again be granted as hereinbefore provided.

81. *Reports of municipal authorities to local boards of health.*—The report of the public authorities having by law charge of the sewer system of every municipality in the State, from which sewer system sewage was being discharged into any of the waters of the State on May 7, 1903, transmitted by the board of health of the municipality within which any sewer outlet of the said sewer system is located to the State commissioner of health and filed by him in his office shall constitute the evidence of exemption from the prohibition of section 76 of this article. No sewer system shall be exempt from the prohibition of said section against the discharge of sewage into the waters of the State for which a satisfactory report shall not have been filed in the office of the State commissioner of health in accordance with laws of 1903, chapter 468.

82. *Reports of proprietors of industrial establishments.*—The report of the proprietor of every shop, factory, mill, and industrial establishment in the State, from which refuse or waste matter was being discharged into any of the waters of the State on May 7, 1903, filed in the office of the State commissioner of health, shall constitute the evidence of exemption of the shop, factory, mill, or industrial establishment from the prohibition of section 76 of this article. No shop, factory, mill, or industrial establishment shall be exempt from the prohibition of said section against the discharge of refuse or waste matter into the waters of the State, for which a report shall not have been made in accordance with laws of 1903, chapter 468.

83. *Record of permits; inspection of local boards of health.*—Each board of health shall preserve in its office and in a form to be prescribed by the State commissioner of health a permanent record of each permit issued by the State commissioner of health granting the right to discharge sewage or refuse or waste matter into any of the waters of the State within that municipality and of each revocation of a permit; and also a permanent record of each report

received by the board of health concerning each sewer system and each shop, factory, mill, or industrial establishment which on May 7, 1903, was discharging sewage or refuse or waste matter into any of the waters of the State within that municipality. Each local board of health shall make and maintain such inspection as will, at all times, enable it to determine whether section 76 of this article is being complied with in respect to the discharge of sewage, refuse, or waste matter or other materials prohibited by said section into any of the waters of the State within that municipality. For the purpose of such inspection every member of such board of health, or its health officers, or any person duly authorized by it, shall have the right to make all necessary examinations of any premises, building, shop, factory, mill, industrial establishment, process, or sewer system.

84. (amended by Laws of 1911, chap. 553). *Local board to ascertain violations, etc.*—The local board of health of each municipality shall promptly ascertain every violation of, or noncompliance with, any of the provisions of section 76 of this article or of the permits for the discharge of sewage or refuse or waste material into any of the waters of the State herein provided, which may occur within that municipality, or the State commissioner of health may ascertain such violations or noncompliance. The local board of health shall, on the discovery of every violation of or noncompliance with any of the provisions of said section or of any permit duly issued, report the same in writing to the said commissioner of health. Upon such report from a local board of health or upon ascertaining such violation or noncompliance, the State commissioner shall at once give a hearing to and take the proof of persons charged with such violation or noncompliance and investigate the matter, and if he finds a violation or noncompliance to exist he may bring an action in the name of the people of the State in a court of record against the person or corporation responsible for the violation or noncompliance, for the recovery of the penalties incurred, and for an injunction against the continuation of the violation or noncompliance.

85. *Penalties.*—The penalty for the discharge of sewage from any public sewer system into any of the waters of the State without a duly issued permit for which a permit is required by this article shall be \$500, and a further penalty of \$50 per day for each day the offense is maintained. The penalty for the discharge of sewage from any public sewer system into any of the waters of the State without filing a report for which a report is required to be filed with the board of health of the municipality shall be \$50. The penalty for the discharge of refuse or waste matter from any shop, factory, mill, or industrial establishment for which a permit is required by this article, without such permit shall be \$100 and \$10 per day for each day the offense is maintained. The penalty for the discharge of refuse or waste matter from any shop, mill, factory, or industrial establishment, without filing a report where a report is required by this article to be filed shall be \$25 and \$5 per day for each day the offense is maintained. The penalty for discharging into any of the waters of the State any other matter prohibited by section 76 of this article, besides that specified above, shall be \$25 and \$5 per day for each day the offense is maintained.

86. *Constructions and limitations made by sections 76 to 85, inclusive.*—Nothing in sections 76 to 85, inclusive, shall be construed to diminish or otherwise to modify the common-law rights of riparian owners in the quality of waters of streams covered by such rights, nor in the case of actions brought against the pollution of waters to limit their remedy to indemnities.

87. *Actions by municipalities to prevent discharge of sewage into waters.*—Any incorporated city or village in the State of New York, which has made

such provision for the disposal of its sewage as not to pollute or contaminate therewith any river, stream, lake, or other body of water, may have and maintain an action in the supreme court to prevent the discharge of any sewage or substance deleterious to health, or which shall injure the potable qualities of the water in any river, stream, lake, or other body of water, from which such incorporated city or village shall take or receive its water supply, provided that such river, stream, lake, or other body of water is wholly or in part within the boundaries of the county in which such plaintiff is located. Whenever such action shall be brought under the provisions of this section, it shall be the duty of the supreme court upon proof of the existence of facts justifying the bringing and maintenance of such action under the provisions of this section to render a judgment in which shall be incorporated a mandatory injunction requiring the person, body, board, corporation, municipality, village, county, or town, being a defendant to said action which directly or indirectly, or by its servants, agents, or officers shall discharge or dispose of its sewage, or any other substance deleterious to health or which shall injure the potable qualities of the water in such wise as that the same shall enter into any river, stream, lake, or other body of water from which such plaintiff shall take or receive its water supply, within such reasonable time as may be prescribed by the court, to take such action as shall prevent such discharge or the disposal of such sewage or other substance into such waters, or the pollution thereof, with such further directions in the premises as may be proper and desirable to effect such purpose, provided that such river, stream, lake, or other body of water is wholly, or in part, within the boundaries of the county in which such plaintiff is located. But no such action shall be brought as provided for in this section until the State department of health has examined and determined whether the sewage does pollute or contaminate the river, stream, lake, or other body of water into which said sewage is discharged. The expense of such examination by said department shall be a charge upon and paid by the municipality in whose interest and on whose behalf such examination is made. In case the State department of health shall find upon examination that the discharge of said sewage does pollute or contaminate said waters, or any of them, in such manner as to be of menace or danger to the health of those using said waters, the plans for the removal or disposal of the sewage ordered to be prepared by the court, as provided in this section, shall be submitted to the State department of health for its approval.

312. *Bathing near sewers prohibited, etc.*—It shall be unlawful for any person to maintain, either as owner or lessee, any bathing establishment of any kind in this State for the accommodation of persons, for pay or any consideration, at a point less than 500 feet from any sewer connection emptying therein, or thereat, so as to pollute in any way the waters used by those using or hiring bathing houses at such bathing establishments * * *.

[SECOND CLASS CITY LAW; CONSOLIDATED LAWS, 1909, CHAP. 55.]

94. *Commissioner of public works to prevent pollution of water supply.*—* * * It shall be the duty of the commissioner of public works to see that the city has an abundant supply of pure and wholesome water for public and private use; to devise plans and sources of water supply; to plan and supervise the construction, maintenance, and extension of the water system and the distribution of water through the city; to protect it from contamination * * *.

150. *Health officer to approve sewer plans.*—All plans for sewers and drains shall be submitted to the health officer for his approval before contracts are let for the construction of the same, and, in case he shall disapprove the same,

such sewer and drains shall not be constructed unless, on appeal to the commissioner, he shall approve the same. The health officer has power, subject to the right of appeal herein provided, to stop the construction or use of drains and sewers which are not properly constructed or properly used, or which are not in accordance with plans previously approved and adopted.

[VILLAGE LAW; CONSOLIDATED LAWS, 1909, CHAP. 64.]

260. *Village sewer commissioners.*—The board of sewer commissioners of a village may establish, extend, and maintain a sewer system therein. Before taking any proceedings for the construction of any sewer the board, at the expense of the village, shall, unless such map and plan have already been officially approved by the State commissioner of health and copies filed in the State department of health and in the office of the village clerk, cause a map and plan of a permanent sewer system for such village to be made, with specifications of dimensions, connections and outlets, or [sic] sewage-disposal works. * * * Such map and plan shall be submitted to the State commissioner of health for his approval, and if approved shall be filed in his office. A copy thereof shall also be filed in the office of the village clerk. * * * No work of any kind shall be done on or for the construction, extension, reconstruction, removal, or modification of any system of sewers, or of any sewer thereof, until a map and plan covering the entire system shall first have been duly approved and filed as above provided * * *.

[LAWS, 1917, CHAP. 600.]

SECTION 1. *Protecting New York City water supply in times of emergency.*—If, in the opinion of the governor, an emergency exists requiring such action in the interest of public safety, by reason of riots, insurrections, or when a state of war exists or is imminent, or in case of epidemics or a prevalence of disease, he may file a certificate in writing, in the office of the secretary of State, prohibiting fishing, boating, or ice-taking on any lake, reservoir, or other lands or waters the title to which is vested in the city of New York or owned, possessed, or controlled by such city and constituting a source of water supply of such city, after a date specified in such certificate; and after such date no person shall fish, boat, or cut ice on any such lake, reservoir, or other lands or waters, notwithstanding the provisions of any general, special, or local law authorizing the same. Such prohibition shall continue until the governor shall in like manner certify that the emergency upon which such prohibition was based shall have ceased: *Provided, however,* That the power hereby granted shall cease on the 1st day of September, 1918.

SEC. 2. *Penalty.*—Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

[LABOR CAMPS—SANITARY REGULATION. CHAP. 5, REG. PUBLIC HEALTH COUNCIL, OCT. 20, 1914.]

REGULATION 1. *Pollution of waters prohibited.*—All persons living in the open or in camps, tents, or other temporary shelters shall exercise every proper and reasonable precaution to dispose of their wastes, so that springs, lakes, reservoirs, streams, and other watercourses shall not be polluted.

REG. 9. *No building, tent, or car in any camp to be nearer than 50 feet of water's edge of public-water supply.*—In every camp or temporary quarters the nearest part of any building, tent, car, or shed shall be at least 50 feet in a horizontal direction from the water's edge of any stream, lake, or reservoir.

except in the case of the Hudson River below the city of Albany, the waters of which are used for a public-water supply.

Reg. 10. Suitable privy or other toilet facilities to be provided and used.—For every camp there shall be provided convenient and suitable privy or other toilet facilities approved by the local health officer, which the occupants of the camp shall be required to use instead of polluting the ground.

Reg. 11. Construction of privies more than 200 feet from the water's edge.—If each privy be more than 200 feet from the water's edge of any spring, stream, lake, or reservoir forming part of a public or private water supply, it shall consist of a pit at least 2 feet deep, with suitable shelter over the same. No such pit shall be filled with excreta to nearer than 1 foot from the surface of the ground, and the excreta in the pit shall always be covered with earth or ashes. If the camp is to be occupied for more than six days between May 1 and November 1, the shelter and pit shall be inclosed in fly netting.

Reg. 12. Construction and care of privies located between 50 and 200 feet from the water's edge.—If such privy be between 50 and 200 feet from the waters of a spring, stream, lake, or reservoir forming part of a public or private-water supply, there shall be no pit, but the excreta shall be received in a water-tight tub or bucket and periodically, as often as may be found necessary, shall be taken away and disposed of. Such privy shall be properly screened against flies and kept in a clean and sanitary condition; the pails or buckets shall not be allowed to fill so that they overflow or spill in carrying, and the construction of the privy shall be such that the convenient removal and replacement of the tubs or buckets is facilitated.

Reg. 13. Disposal of wastes from privies.—The pails or buckets used in privies located between 50 and 200 feet from the water's edge, as referred to in regulation 12, shall when not more than three-quarters filled be removed from the privy and carried at least 200 feet from the water's edge and the contents there either burned or buried in a trench at least 2 feet deep, so that when buried there shall be at least 1 foot of earth cover. The tubs or buckets immediately after being emptied shall be rinsed out with a suitable disinfectant as particularly prescribed for such purposes by the special rules and regulations of the State department of health, and the rinsing fluid shall also be emptied into the trench.

Reg. 14. Garbage to be disposed of in suitable manner.—All garbage, kitchen wastes, and other rubbish in camps shall be deposited in suitable covered receptacles, which shall be emptied daily or oftener if necessary, and the contents burned, buried, or otherwise disposed of in such a way as not to be or become offensive or insanitary.

Reg. 15. Water rules to be observed.—Whenever a camp is established on the banks of a spring, lake, reservoir, stream, or other watercourse which is a source of water supply protected by water rules formulated by the State commissioner of health, no bathing or washing by the occupants of said camp shall be allowed in said springs, lakes, reservoirs, streams, or other watercourses, and all said water rules shall be strictly observed. There shall be furnished by the local health officer and conspicuously posted in such camp a copy of said rules or parts thereof as may be considered necessary by the State commissioner of health.

Reg. 16. Location and drainage of stables regulated.—No stable or other shelter for animals shall be maintained within 100 feet of any living quarters in a camp, nor within 150 feet of any kitchen or messroom therein. No drainage from such stable or shelter shall be permitted to empty directly into any spring, lake, reservoir, stream, or other watercourse forming part of a public or private water supply.

[SANITARY CODE—PENALTY FOR VIOLATION. REG. PUBLIC HEALTH COUNCIL, JAN. 22, 1910 (AMENDMENT).]

REG. 2. *Violations declared to be misdemeanors.*—Any violation of any provision of this code is hereby declared to be a misdemeanor and is punishable by a fine of not more than \$50, or by imprisonment for not more than six months, or by both. This regulation shall take effect throughout the State of New York, except in the city of New York, on the 1st day of March, 1916.

NORTH CAROLINA.

[PELL'S REVISAL OF 1908; GREGORY'S SUPPLEMENT, 1913; GREGORY'S REVISAL BIENNIAL, 1915.¹]

2444. *Fish offal not to be thrown in navigable waters.*—If any person shall throw, or cause to be thrown, into the channel of any of the navigable waters of the State any fish offal in any quantity that shall be likely to hinder or prevent the passage of fish along such channel, or if any person shall throw, or cause to be thrown, into the waters known as the Frying Pan, tributary to the Great Alligator River, in Tyrrell County, any fish offal in any quantities whatsoever, he shall be guilty of a misdemeanor. (Pell's Revisal of 1908.)

2484L. (19)² *Use of drugs for taking fish prohibited.*—It shall be unlawful to place in any of the waters of this State * * * any drug or poisoned bait for the purpose of taking, killing, or injuring fish. And anyone violating this section shall, upon conviction, be fined not less than \$100 and imprisoned not less than 30 days.

(20) *Discharging poisonous substances in waters.*—It shall be unlawful to discharge or to cause or permit to be discharged into the waters of the State any deleterious or poisonous substance or substances inimical to the fishes inhabiting the said waters; and any person, persons, or corporation violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, be fined or imprisoned, in the discretion of the court: *Provided*, This section shall not apply to corporations chartered either by general law or special act before the ratification of this act. (Gregory's Revisal Biennial, 1915.)

3048.³ *Cities and towns to make inspection.*—Every city or town having a public water supply shall, at its own expense, have made at least once in every three months by one of its own officials a sanitary inspection of the entire watershed of its water supply, and it shall be the duty of the official making such inspection to report to the mayor any violation of this chapter [chap. 76, Water supplies, of Pell's Revisal]. (Pell's Revisal.)

3053. *No cemetery allowed on watershed.*—No burying ground or cemetery shall be established on the watershed of any public water supply nearer than 500 yards of the source of supply. (Pell's Revisal of 1908.)

3050.⁴ *Mayors to have concurrent jurisdiction.*—The mayor of each city or town having a public water supply shall have concurrent jurisdiction with any

¹ Volume from which law was copied is indicated at the end of each section.

² See sec. 3417.

³ It is doubtful whether this section is in force, as it conflicts in a degree with the provisions of 4434a. The repealing clause of chap. 62, Public Laws of 1911, which created 4434a, reads as follows: "All laws and clauses of laws in conflict with this act are hereby repealed." The intention of the legislature may, in fact, have been to repeal all laws relating to the subjects covered by 4434a (21-34), which would make some of the sections here given null and void. Sections evidently reenacted or superseded are given only under 4434a, footnotes showing the sections affected. They are 3045-3047, 3049-3052, 3054-3058, 3058a-c, 3060-3062, 3858, and 3862.

⁴ This section might be construed to include violations of sections of chap. 76 reenacted as subsections of 4434a, because there is no definite repeal of those sections in chap. 62, Public Laws of 1911. See footnote to sec. 3048 above.

justice of the peace to hear and determine all violations of this chapter [chap. 76, Water supplies, of Pell's Revisal, 3045-3062], provided such violation is within the jurisdiction of the justice of the peace. (Pell's Revisal of 1908.)

3298. *Placing bodies of animals dying of infectious diseases in streams.*—If any hog or other animal shall die with the hog cholera or other infectious disease, and the owner thereof shall fail to burn or to so bury the same as to secure it from the reach or contact with other hogs or other domestic animals of value, or if he shall throw or place such hog or other animal in any ditch, canal, branch, creek, river, or other watercourses passing beyond his own premises, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than \$50 or imprisoned not more than 30 days. (Pell's Revisal of 1908.)

3382a. *Placing sawdust in certain streams prohibited.*—If any person shall throw sawdust into any stream he shall be guilty of a misdemeanor and fined not more than \$50 or imprisoned not more than 30 days. This section shall apply to the following streams only: * * *; *Provided*, This act shall not apply to streams wherein rainbow trout have been placed. (Gregory's Supplement, 1913.)

3417.² *Poisoning water supplies.*—If any person shall put any poisonous substance for the purpose of catching, killing, or driving off any fish in any of the waters of a creek or river, he shall be guilty of a misdemeanor. (Pell's Revisal of 1908.)

3456.¹ *Making wells, etc., unwholesome.*—If any person shall willfully put into the well, spring, or cistern of water of any other person any substance or thing whereby such well, spring, or cistern may be endangered or the water thereof be made less wholesome or fit for use, he shall be guilty of a misdemeanor. (Pell's Revisal of 1908.)

3457.⁴ *Willful corruption of sources of water supply.*—If any person shall willfully or maliciously defile, corrupt, or make impure any well, spring, or other source of water supply, or reservoir, or destroy or injure any pipe, conductor of water, or other property pertaining to an aqueduct, or shall aid and abet therein, he shall be guilty of a misdemeanor.

For any violation of this section or of the laws relating in any way to the public health it shall be the duty of the solicitors of the several judicial districts, upon complaint of the board of health, or of any of its officers, or of any individual injured or likely to be injured, to institute a criminal action against the person, firm, corporation, or municipality charged with such violation in their respective districts and prosecute the same. (Gregory's Supplement, 1913.)

3458. *Water supply of public institutions.*—If any person shall in any way intentionally or maliciously damage or obstruct any water line of a public institution, or in any way contaminate or render the water impure or injurious, he shall be guilty of a misdemeanor and shall be fined or imprisoned, in the discretion of the court. (Pell's Revisal of 1908.)

3857.³ *Depositing human excreta on watersheds.*—If any person shall collect and deposit human excreta on the watershed of any public water supply, he shall be guilty of a misdemeanor, and punished by fine and imprisonment, in the discretion of the court. (Pell's Revisal of 1908.)

3859. *Disobeying provisions of law for protection of water supply.*—If any person residing on or owning property on a watershed of any stream from

¹ It has appeared unnecessary to list the streams.

² See 24841(19), which is a later law.

³ See 4434a(29).

⁴ Superseded, in part at least, by 4434a(29), which see.

* This might be regarded as being superseded by 4434a(29).

which public drinking water is obtained shall fail to comply with the provisions of the law for protection of such water supply, he shall be guilty of a misdemeanor, and punished by a fine of not less than \$2 nor more than \$25, or by imprisonment for not less than 10 nor more than 30 days. (Pell's Revisal of 1908.)

3860. *Failure to provide system for protection of watershed.*—If any person or municipality shall violate the provision of law for protecting watersheds by failing to provide the tub system for human excrement, as required by law, he shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court. (Pell's Revisal of 1908.)

3861. *Inspection.*—Where the waterworks are owned and operated by any city or town, failure on the part of the municipal officials having in charge the management of the waterworks to comply with the law requiring sanitary inspection of watersheds shall be a misdemeanor and punished by a fine of not less than \$10 nor more than \$25, or by imprisonment for not less than 10 nor more than 30 days; *Provided* the said official do not prove to the satisfaction of the court that in spite of reasonable effort and diligence on his part he was prevented, directly or indirectly, by his superiors from doing his duty in this respect, in which case said superior officer shall be deemed guilty of a misdemeanor and punished by a fine of not less than \$50 nor more than \$200, or by imprisonment for not less than one nor more than six months. (Pell's Revisal of 1908.)

4434a. (21)¹ *Precaution against contamination; regulations of board of health.*—In the interest of the public health, every person, company, or municipal corporation or agency thereof selling water to the public for drinking and household purposes shall take every reasonable precaution to protect from contamination and assure the healthfulness of such water, and any provisions in any charters heretofore granted to such persons, companies, or municipal corporations in conflict with the provisions of this section are hereby repealed. The State board of health shall have the general oversight and care of all inland waters, and shall from time to time, as it may deem advisable, cause examinations of said waters and their sources and surroundings to be made for the purpose of ascertaining whether the same are adapted for use as water supplies for drinking and other domestic purposes, or are in a condition likely to impair the interests of the public or of persons lawfully using the same, or to imperil the public health. For the purpose aforesaid, it may employ such expert assistants as may be necessary. The said board shall make such reasonable rules and regulations as in its judgment may be necessary to prevent contamination and to secure other purifications as may be required to safeguard the public health. Any individual, firm, corporation, or municipality, or the person or persons responsible for management of the water supply, failing to comply with said rules and regulations, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court.

The State board of health shall from time to time consult with and advise the boards of all State institutions, the authorities of cities and towns, corporations or firms already having or intending to introduce systems of water supply, drainage or sewerage, as to the most appropriate source of supply, the best practical method of assuring the purity thereof; or of disposing of their drainage or sewerage, having regard to the present and prospective needs and interests of other cities, towns, corporations, or firms which may be affected thereby. All such boards of directors, authorities, corporations, and firms are hereby

¹ Recruits unaltered secs. 3058, 5058a, superseded secs. 3058b-c.

required to give notice to said board of their intentions in the premises and to submit for its advice outlines of their proposed plans or schemes in relation to water supplies and disposal of sewage, and no contract shall be entered into by any State institution or town for the introduction of a system of water supply or sewage disposal until said advice shall have been received, considered, and approved by the said board. For the purpose of carrying out the general provisions of this section, every municipal or private corporation, company, or individual supplying or authorized to supply water for drinking or other domestic purposes to the public shall file with the secretary of the State board of health, within 90 days after the receipt of notice from said secretary, certified plans and surveys, in duplicate, pertaining to the source from which the water is derived, the possible source of infections thereof, and the means in use for the purification thereof, in accordance with the directions to be furnished by the said secretary. Failure on the part of any individual, firm, corporation, or municipality to comply with this section shall be a misdemeanor, and upon conviction those responsible therefor shall be fined not less than \$50 nor more than \$100, at the discretion of the court.

(22.)¹ *Condemnation of lands.*—All municipalities operating water systems and sewer systems, and all water companies operating under charter from the State or license from municipalities, which may maintain public water supplies, may acquire by condemnation such lands and rights in lands and water as are necessary for the successful operation and protection of their plants, said proceedings to be the same as prescribed by law for acquiring right of way by railroad companies.

(23.)² *May enter upon lands to lay pipes, etc.*—For the purpose of providing water supplies, the directors or other lawful managers of any public institution of the State may enter upon the lands through which they desire to conduct their pipes for said purpose, and lay them underground, and they at all times shall have the right to enter upon said lands for the purpose of keeping the water line in repair and do all things to that end.

(24.)³ *Compensation for land.*—If damages shall be claimed for the use of such lands, and the parties can not agree as to the amount of compensation to be paid, they may proceed in the manner now provided by law for railroad companies to procure right of way.

(25.)⁴ *Inspections of watersheds.*—Any waterworks that derive their water from a surface supply shall have a quarterly sanitary inspection of the entire watershed, except in those cases where the supply is taken from large creeks or rivers that have a minimum daily flow of 10,000,000 gallons, in which case the inspection shall apply to the 15 miles of watershed above the waterworks intake. Such water companies shall cause to be made a sanitary inspection of any particular locality on said watershed at least once in every week, whenever in the opinion of the board of health of the city or town to which the water is supplied, or, when there is no such local board of health, in the opinion of the county superintendent of health or in the opinion of the State board of health, there is special reason to apprehend the infection of the water from that particular locality by the germs of typhoid fever or cholera. The inspection of the entire watershed as herein provided for shall include a particular examination of the premises of every inhabited house on the watershed, and, in passing from house to house, a general inspection for dead bodies

¹ Supersedes sec. 3060.

² Reenacts unaltered sec. 3061.

³ Reenacts unaltered sec. 3062.

⁴ Supersedes secs. 3045, 3046.

of animals or accumulation of filth. It is not intended that the term "entire watershed" shall include uninhabited fields and wooded tracts that are free from suspicion. The inspection shall be made by an employee of and at the expense of said water company in accordance with reasonable instructions as to methods, scope, and details, to be furnished by the secretary of the State board of health. The said sanitary inspector shall give in person to the head of each household on said watershed or, in his absence, to some member of said household, the necessary directions for the proper sanitary care of his premises. It shall further be the duty of said inspector to deliver to each family residing on the watershed such literature on pertinent sanitary subjects as may be supplied him by the municipal health officer or by the secretary of the State board of health. Full report in duplicate of all such inspections shall be made promptly to the secretary of the State board of health and their accuracy certified to by the affidavit of the inspector, or such officer or person as the said secretary may direct.

(26.)¹ *Inspections of watersheds; penalty for failure.*—Failure on the part of those having in charge the management of public water supplies to comply with the law requiring sanitary inspections of watersheds shall be a misdemeanor and punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than 10 nor more than 30 days: *Provided*, The said official does not prove to the satisfaction of the court that, in spite of reasonable effort and diligence on his part, he was prevented, directly or indirectly, by his superiors from doing his duty in this respect; in which case the said superior officer shall be deemed guilty of a misdemeanor and punished by a fine of not less than \$50 nor more than \$200, or by imprisonment for not less than one nor more than six months.

(27.)² *Inspectors may enter upon premises.*—Each sanitary inspector herein provided for is authorized and empowered to enter upon any premises and into any building upon his respective watershed for the purpose of making the inspections required.

(28.)³ *Residents on watersheds to obey instructions.*—Every person residing or owning property on the watershed of a lake, pond, or stream from which a drinking supply is obtained shall carry out such reasonable instructions as may be furnished him in the matter hereinbefore set forth directly by the municipal health officer or by the State board of health. Anyone refusing or neglecting to comply with the requirements of this section shall be guilty of a misdemeanor and fined not less than \$10 nor more than \$50, or imprisoned for not less than 10 nor more than 30 days.

(29.)⁴ *Damage to water supply.*—If any person shall defile, corrupt, or make impure any well, spring, drain, branch, brook, creek, or other source of public water supply by collecting and depositing human excreta on the watershed, or depositing or allowing to remain the body of a dead animal on the watershed, or in any other manner, and if any person shall destroy or injure any pipe, conductor of water, or other property pertaining to an aqueduct, or shall aid and abet therein, he shall be guilty of a misdemeanor.

(30.)⁵ *Sewage not discharged in.*—No person, firm, corporation, or municipality shall flow or discharge sewage above the intake into any drain, brook, creek, or river from which a public drinking-water supply is taken, unless the same

¹ Supersedes sec. 3047.

² Reenacts unaltered sec. 3050.

³ Supersedes sec. 3049.

⁴ Supersedes sec. 3062, and, in part at least, sec. 3457, given above. See also secs. 3456 and 3857.

⁵ Supersedes sec. 3051.

shall have been passed through some well-known system of sewage purification approved by the State board of health; and the continued flow and discharge of such sewage may be enjoined upon application of any person.

(31)¹ *Discharging sewage into certain streams.*—If any person, firm, or corporation, or other officer of any municipality having a sewerage system in charge shall violate the provision of the law relating to discharging sewage into streams from which public water is taken, he shall be guilty of a misdemeanor.

(32)² *Towns, etc., not having sewerage systems.*—All schools, hamlets, villages, towns, or industrial settlements which are now located or may be hereafter located on the shed of any public water supply, not provided with a sewerage system, shall provide and maintain a reasonable system approved by the State board of health for collecting and disposing of all accumulations of human excrement within their respective jurisdiction or control. Anyone refusing or neglecting to comply with the requirements of this section shall be guilty of a misdemeanor and fined not less than \$10 or more than \$50, or imprisoned for not less than 10 nor more than 30 days.

(33)³ *State laboratory of hygiene; analysis of water, sputum, blood, etc., appropriation for; tax against water companies.*—For the better protection of the public and to prevent the spread of communicable diseases, there shall be established a State laboratory of hygiene, the same to be under the control and management of the State board of health, and it shall be the duty of the State board of health to have made in such laboratory monthly examinations of samples from all public water supplies of the State, of all waters sold in bottle or other package and of all spring waters that are maintained and treated as an adjunct to any hotel, park, or resort for the accommodation or entertainment of the public: *Provided*, That in the case of springs in connection with hotels, parks, or resorts intermittently operated, examinations of the water shall be made monthly during the period only that they are open for the accommodation and entertainment of the public; but if upon the examination of the water of any such spring it shall be found to be infected or contaminated with intestinal bacilli or other impurities dangerous to health, examinations shall be made weekly until its purity and safety are shown. The board shall also cause to be made examinations of well and spring waters when in the opinion of any county superintendent of health or any registered physician there is reason to suspect such waters of being contaminated and dangerous to health. The board shall likewise have made in this laboratory examinations of sputum in cases of suspected tuberculosis, or throat exudates in cases of suspected diphtheria, of blood in cases of suspected typhoid and malarial fever, of feces in cases of suspected hookworm disease, and such other examinations as the public health may require. For the support of the said laboratory the sum of \$4,000 annually is hereby appropriated and an annual tax of \$64, payable quarterly, by each and every water company, municipal, corporate, and private, selling water to the people: *Provided*, That the said annual tax for waters from springs or wells sold in bottles or otherwise shall be as follows: For springs or wells the gross annual sales from which for the previous calendar year are less than \$2,000 and more than \$1,500, \$50; less than \$1,500 and more than \$1,000, \$40; less than \$1,000 and more than \$500, \$30; less than \$500 and more than \$250, \$20; and less than \$250, \$15; and for any spring maintained and treated as an adjunct to any hotel, park, or resort for the accommodation and entertainment of the

¹ Reenacts unaltered sec. 3858.

² Supersedes sec. 3052.

³ Supersedes secs. 3056, 3057; apparently repeals secs. 3054, 3055. See footnote to sec. 3018 above.

public, \$15, and an additional tax for water sold in bottle or other package from said spring in accordance with the above schedule.

Every corporation, firm, or person selling water in the manner set forth in this proviso shall file with the treasurer of the State board of health, within 60 days after the passage of this act and annually thereafter in the month of January, an affidavit as to the gross amount received from sale of water for the previous calendar year, and upon this affidavit the tax for the current year shall be based. Failure to so file said affidavit within the time prescribed shall subject the said corporation, firm, or person so failing to file said affidavit to double the tax for the current year. Failure to transmit sample within five days after receipt of sterilized bottle or container from the laboratory of hygiene shall be a misdemeanor, and upon conviction shall subject the delinquent to a fine of \$25. Transportation charges, by mail, shall be paid by the sender; by express, by the laboratory. When deemed advisable, the said laboratory of hygiene shall analyze samples purchased by it in the open market in lieu of those sent direct from the spring. The said tax shall be collected quarterly by the sheriff as other taxes and shall be paid by the said sheriff directly to the treasurer of the State board of health. The printing and stationery necessary for the laboratory shall be furnished upon requisition upon the State printer. Any person, firm, or corporation not a citizen of the State of North Carolina who shall sell or offer for sale any water in bottle or other package for consumption by the people of the State of North Carolina shall obtain a license from the treasurer of the State board of health and shall pay for said license the sum of \$64 per annum, or less amount equal to the tax paid by springs of the same class within the State upon compliance with the condition applying to them, payable in advance: *Provided*, That satisfactory evidence of purity furnished by the State laboratory of other States agreeing to reciprocate in this matter with this State shall be accepted in lieu of the said license tax. If water sold by any person, firm, corporation, or municipality shall be discovered by three successive analyses made by the State laboratory of hygiene to be dangerous to the public health, publication of that fact shall be made in the monthly bulletin of the State board of health. The result of said analyses shall be immediately forwarded by mail to the person, firm, corporation, or municipality selling the water so analyzed. When upon subsequent analyses the water shall be found no longer dangerous to health, a certificate thereof shall be furnished the person, firm, corporation, or municipality offering the said water for sale, and publication of the fact shall be made in the said monthly bulletin: *Provided*, That this act shall not apply to the therapeutic waters so medicated as to render them sterile, the question of their sterility to be decided by the director of the State laboratory of hygiene.

(34) *Duties of solicitor to prosecute infringements.*—For every violation of sections 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37¹ it shall be the duty of the solicitors of the several judicial districts, upon the complaint of the board of health, or any of its officers, or of any individual injured or likely to be injured, to institute a criminal action against the person, firm, corporation, or municipality charged with such violation in their respective districts, and prosecute the same. (Gregory's Supplement, 1913.)

4460a. *Emptying bowel discharges from typhoid patient on watershed.*—Any householder in whose family there is to his knowledge a person sick of cholera

¹An amendment in 1913 (chap. 181) omitted three subsections, making new numbering necessary, but did not alter the numbers here given. Originally the specified subsections were those now numbered 22 to 34, inclusive. There is no subsection 37, and 35 and 36 refer to appropriations.

or typhoid fever who shall permit the bowel discharges of such sick person to be emptied without first having disinfected them according to instructions to be obtained from the attending physician or the county superintendent of health shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$2 nor more than \$25, or imprisoned not less than 10 nor more than 30 days. In cases where such undischarged discharges are emptied on the watershed of any stream or pond furnishing the source of water supply for any public institution, city, or town, the penalty shall be a fine of not less than \$25 nor more than \$50, or imprisonment for not more than 30 days.

* * * (Gregory's Supplement, 1913.)

[PUBLIC LAWS, 1917, CHAP. 123.]

SECTION 1. Disposition of waste from kaolin mines.—In getting out and washing the products of kaolin mines, the persons engaged in such business shall have the right to allow the waste, water, and sediment to run off into the natural courses and streams.

NORTH DAKOTA.

[COMPILED LAWS, 1913.]

400. Regulations of State board of health.—The board [State board of health] shall have power and it shall be its duty:

3. To make and enforce all needful rules and regulations for the prevention and cure and to prevent the spread of any contagious, infectious, or malarial diseases among persons and domestic animals.

2994. Prohibiting contamination of water for hotels.—It shall be the duty of every person conducting or operating a hotel, public inn, or lodging house to see that the drinking water supplied by said hotel, public inn, or lodging house is pure and free from disease germ. The source of supply must be far enough removed from privy vaults or other means of contamination to prevent drainage from said vaults to the wells or other source of supply, and the water supply shall be subject to examination by the inspector [inspector of hotels] and when found unfit for drinking purposes its use must be discontinued forthwith.

3097. Discharge of sewage into streams.—* * * Any city may empty or discharge its sewerage [sic] into any river, but where a dam on such river is located within the corporate limits of any city the sewerage [sic] shall in such cases be discharged below such dam: And provided further, That in case there is no river accessible into which to discharge such system of sewerage the same may be discharged into a lake, coulee, or slough, and in any of the latter cases a septic tank system shall be employed for sewerage [sic] from closets, kitchen sinks, or anything carrying objectionable matter prior to discharging same into the lake, coulee, slough, or other outlet, but that any drainage from basements, cellars, or surface may be discharged direct into the lake, coulee, slough, or other outlet prior to emptying into the main sewer system, but that any drainage from basements, cellars, or surface may be admitted direct into the main sewer system without first passing through the septic tank system.

5341. Prohibiting pollution of water by owner of land underneath.—The owner of the land owns water standing thereon or flowing over or under its surface but not forming a definite stream. Water running in a definite stream formed by nature over or under the surface may be used by him as long as it remains there, but he may not prevent the natural flow of the stream or of the natural spring from which it commences its definite course, nor pursue nor pollute the same.

5341a. "*Watercourse*" defined.—A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and defined channel. It is not essential that the supply of water should be continuous or from a perennial living source. It is enough if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character.

9205. *Misdemeanors except where different punishment is prescribed elsewhere*.—Except in cases where a different punishment is prescribed by this code or by some existing provisions of law, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$500, or by both such fine and imprisonment.

9706. *Poisoning springs, etc.*—* * * every person who willfully poisons any spring, well, or reservoir of water is punishable by imprisonment in the penitentiary not less than 1 and not exceeding 10 years, or in a county jail not exceeding one year, or by a fine not exceeding \$500, or by both such fine and imprisonment.

9747. *Fouling waters with gas tar*.—Every person who throws or deposits any gas tar or refuse of any gas house or factory into any public waters, river, or stream, or into any sewer or stream emptying into any such public waters, river, or stream, is guilty of a misdemeanor.

9754. *Violation of health laws*.—Every person who willfully violates any provision of the health laws the punishment for violating which is not otherwise prescribed by those laws or by this code, and every person who willfully violates or refuses or omits to comply with any lawful order, direction, prohibition, or regulation prescribed by any board of health or health officer, or any regulation lawfully made or established by any public officer under authority of the health laws, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$2,000, or both.

10225. *Fouling public waters*.—Every person who deposits or places or causes to be deposited or placed any dead animal, offal, or other refuse matter offensive to the sight or smell or deleterious to health upon the banks or in the waters of any lake or stream, so far as the same is within the jurisdiction of this State, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than \$20 and not exceeding \$100.

10226. *Extent of last section*.—The provisions of the last section shall be construed to include privies and privy vaults and any stable, shed, pen, yard, or corral wherein is kept any horse, cattle, sheep, or swine, and located nearer than 60 feet from the top of the bank of such lake or stream, and also any slaughterhouse, grave, graveyard, or cemetery located nearer than 80 feet therefrom. But the provisions of said section shall not be construed to prevent any incorporated city within this State from running its sewers into any river: *Provided*, That where there is a dam across said river within the corporate limits of any such city, any such sewer shall connect with such river below such dam.

[CHAP. 161. LAWS OF 1915.]

SEC. 73. *Drugs for taking of fish forbidden*.—No person shall lay, set, or use any drug, poison, lime, medicated bait, fish berries, dynamite, or other deleterious substance whatever * * * in any of the public waters of this State with intent thereby or therewith to catch, take, kill, or destroy any fish * * *.

SEC. 79. *Depositing sawdust*.—Any person who deposits any sawdust or other refuse in any lakes or streams of water wherein the State or Government has deposited any fish, fish eggs or fry, or may deposit any such fry, or where any game fish naturally abound, shall be deemed guilty of a misdemeanor.

OHIO.

[GENERAL CODE, 1912; SUPPLEMENT, 1916.]

479. *Protection of waters of State reservoirs.*—The following rules are hereby adopted for the guidance of the superintendent of public works and of the police patrolmen appointed by said superintendent in the discharge of their official duties:

Rule 92. No sewer, drain, or other connection with closets, cesspools, sinks, privies, or other places where offensive or insanitary matter accumulates shall be drained or discharged into any State reservoir, and no garbage, offal, or filth of any kind shall be thrown or discharged in any manner into any such reservoir or immediate tributary thereto, and this rule shall apply to all house boats and buildings erected over the waters of any State reservoir. (Supplement, 1916.)

485 (as amended by Laws 1917, p. 461). *Laws for protection of fish apply to lakes used for park and pleasure-resort purposes.*—All lakes, reservoirs, and State lands dedicated to the use of the public for park and pleasure-resort purposes with respect to the enforcement of all laws relating to the protection of birds, fish, and game shall be under the supervision and control of the secretary of agriculture. All laws for the protection of fish in inland rivers and streams of the State and all laws for the protection of birds, fish, and game shall apply to all such State reservoirs and lakes.

1237. *Regulations of State board of health.*—The State board of health shall have supervision of all matters relating to the preservation of the life and health of the people * * *. It may make special or standing orders or regulations for preventing the spread of contagious or infectious diseases, * * * and for such other sanitary matters as it deems best to control by a general rule. * * * (General Code, 1912.)

1240. *Water, sewerage, and garbage; approval of the board required in certain cases; penalty.*—No city, village, public institution, corporation, or person shall provide or install for public use a water supply or sewerage system, or purification works for a water supply or sewage of a municipal corporation or public institution, or make a change in the water supply, waterworks intake, water-purification works of a municipal corporation or public institution until the plans therefor have been submitted to and approved by the State board of health. No city, village, corporation, or person shall establish a garbage disposal or manufacturing plant having a liquid waste which may enter any stream within 20 miles above the intake of a public water supply until the location of such garbage or manufacturing plant, including plans for disposing of such liquid waste, is approved by the State board of health. Whoever violates any provision of this section shall be fined not less than \$100 nor more than \$500. (General Code, 1912.)

1247. *Prosecutions under regulations of State board of health.*—All prosecutions and proceedings by the State board of health for the violation of a provision of this chapter [chap. 19, State board of health, secs. 1232-1261 (15), General Code, 1912] which the board is required to enforce, or for the violation of any of the orders or regulations of the board shall be instituted by its secretary on the order of the president of the board. The laws prescribing the modes of procedure, courts, practice, penalties, or judgments applicable to local boards of health shall apply to the State board of health and the violation of its rules and orders. All fines or judgments collected by the board shall be paid into the State treasury to the credit of such board. (General Code, 1912.)

¹ Volume from which law is taken is indicated at end of each section.

1249 (as amended by Laws, 1917, p. 184). *Complaint; by whom made; duty of State board.*—Whenever the council or board of health of a city or village, the commissioners of a county, the trustees of a township, or 10 of the qualified electors of any city or village set forth in writing to the State board of health that a city, village, corporation, or person is permitting to be discharged sewage or waste matter into a stream, watercourse, lake, or pond, and is thereby¹ creating a public nuisance detrimental to health or comfort, or is polluting the source of any public water supply, or that such city or village, having installed and ready for operation a sewage system and sewage-treatment plant neglects or fails for any reason to construct, erect, and put into operation a public water supply and a waterworks distribution system in order to furnish water to the inhabitants of said city or village, and to provide sufficient water to flush said sewers and to dispose of the sewage of said city or village, the State board of health shall forthwith inquire into and investigate the conditions complained of.

1250 (as amended by Laws, 1917, p. 184). *Findings of board; hearing.*—If the State board of health finds that the source of public water supply of a city, village, or community is subject to contamination, or has been rendered impure from the discharge of sewage or other waste matter, or in any other manner, by a city, village, corporation, or person, that such sewage or other waste matter have so corrupted a stream, water course, lake, or pond, as² to give rise to foul and noxious odors, or to conditions detrimental to the health and comfort of those residing in the vicinity thereof, or that a public water supply and a waterworks distribution system should be erected, constructed, installed, and put into operation, the State board of health shall notify such city, village, corporation, or person causing such contamination or pollution of its findings and give an opportunity to be heard.

1251 (as amended by Laws, 1917, p. 184). *Order of board; approval of governor and attorney general.*—After such hearing, if the State board of health determines that such improvements or changes are necessary and should be made, it shall report its findings to the governor and attorney general, and, upon their approval, the board shall notify such city, village, corporation, or person to install works or means, satisfactory to the board, for purifying or otherwise disposing of such sewage or other wastes, or to change or enlarge existing works, or to erect, construct, install, and put into operation a waterworks distribution system and a public water supply in a manner satisfactory to the board. Such works or means must be completed and put into operation within the time fixed by the board, which time shall be subject only to the approval of the governor and attorney general. But no city or village discharging sewage into a river which separates the State of Ohio from another State shall be required to install sewage purification works, so long as the unpurified sewage of cities or villages of another State is discharging into such river above such city or village of this State.

1252. *Complaint of impure water supply.* Whenever the board of health or health officer of a city or village, or 10 per cent of the electors thereof, file with the State board of health a complaint in writing, setting forth that it is believed that the public water supply of such city or village is impure and dangerous to health, the State board of health shall forthwith inquire into and investigate the conditions complained of. (General Code, 1912.)

1253. *Notice and hearing.*—If the State board of health finds that the public water supply of a city or village is impure and dangerous to health, and

¹ Amended law reads "hereby."

² Amended law reads "so as."

that it is not practicable to sufficiently improve the character of such supply by removing the source or sources of pollution affecting it, or if the board finds that such water supply is being rendered impure by reason of improper construction or inadequate size of existing water purification works, it shall notify such city, village, corporation, or person owning or operating such water supply of its findings and give them an opportunity to be heard. (General Code, 1912.)

1254. *May require changes on approval of governor and attorney general.*—After such hearing, if the State board of health determines that improvements or changes are necessary and should be made, it shall report its findings to the governor and attorney general, and upon their approval the board shall notify such city, village, corporation, or person owning or operating such water supply to change the source of supply or to install and place in operation water purification works or device satisfactory to the board, or to change or enlarge existing water purification works in a manner satisfactory to the board within a time to be fixed by the board, which time shall be subject to the approval of the governor and attorney general. (General Code, 1912.)

1255. *Order for improvement of waterworks.*—When the State board of health finds, upon investigation, that any water or sewage purification works, on account of incompetent supervision or inefficient operation, is not producing an effluent as pure as might reasonably be obtained from such plant, and by reason of which any public water supply has become dangerous to health, or any stream or body of water has become offensively polluted, or has become a public nuisance, the board shall issue an order to the officer, board, or department of a city or village, or the corporation or person having charge of or owning such plant, to secure an effluent as pure as might be reasonably expected from such plant and satisfactory to the board. (General Code, 1912.)

1256. *Operation of plant.*—If such officer, board, or department of such city, village, corporation, or person fails, for a period of five days after receiving such order, to secure such effluent, the State board of health shall report the fact to the governor and attorney general, and upon their approval may order such officer, board, or department, or owner of such plant to appoint within 10 days, and pay the salary of, a competent person, to be approved by the State board of health to take charge of and operate such works so as to secure the results demanded by the board. (General Code, 1912.)

1257. *Appeal and reference.*—If an order of the State board of health, when approved by the governor and attorney general, and made in pursuance of the provisions of this chapter relating to public water supply, is not acceptable to any city, village, corporation, or owner affected thereby, such city, village, corporation, or owner shall have the right of appeal, as follows: The necessity and reasonableness of such order may be submitted to two reputable and experienced sanitary engineers, one to be chosen by such city, village, corporation, or owner, and the other by the board, who shall not be a regular employee. Such examiners shall act as referees. If the engineers so chosen are unable to agree, they shall choose a third engineer of like standing, and the vote of the majority shall be final. (General Code, 1912.)

1258. *Power of referees; expenses.*—Such referee engineers may affirm, modify, or reject the order of the State board of health submitted to them, and their decision, as reported in writing to the governor and attorney general, which shall be rendered within a reasonable time, shall be accepted by the State board of health, and shall be enforced by the board in the manner provided for in this chapter. The fees and expenses of the referee engineers shall be equally divided between the city, village, corporation, or owner requesting such reference and the State board of health. (General Code, 1912.)

1290. *Forfeiture for failure to obey orders.*—If a council, department, or officer of a municipality, or person or private corporation fails or refuses for a period of 30 days, after notice given him or them by the State board of health of its findings and the approval thereof by the governor and attorney general, to perform any act or acts required of him or them by this chapter relating to public water supply, the members of such council or department, or such officer or officers, person or private corporation shall be personally liable for such default, and shall forfeit and pay to the State board of health \$500, to be deposited with the State treasurer to the credit of the board. The governor and attorney general, upon good cause shown, may, in their discretion, remit such penalty, or any part thereof. (General Code, 1912.)

1281. *How action may be brought.*—An action may be begun for the recovery of such penalty by the prosecuting attorney of a county in the name of the State in the court of common pleas of such county having jurisdiction of any such party or parties; or it may be begun by the attorney general in such county or in the county of Franklin, as provided by law. (General Code, 1912.)

1446 (as amended by Laws, 1917, p. 480). *Using poisonous substances to take fish prohibited.*—No person shall take, catch, or kill fish in any waters over which the State of Ohio has jurisdiction by means of quicklime, electricity, or any kind of explosive or poisonous substance, or place or use quicklime, electricity, explosive or poisonous substances in any such waters except for engineering purposes and upon the written permission of the secretary of agriculture.

1447. *Penalty.*—Whoever violates any provision of the preceding section shall be fined not less than \$50 nor more than \$250 or be imprisoned not less than 30 days nor more than 6 months, or both. (General Code, 1912.)

3616. *Powers of municipal corporations.*—All municipal corporations shall have the general powers mentioned in this chapter [Enumeration of powers of municipal corporations, secs. 3615-3676], and council may provide by ordinance or resolution for the exercise and enforcement of them. (General Code, 1912.)

3619. *To prevent pollution of water supplies.*—To provide for a supply of water by the construction of wells, pumps, cisterns, aqueducts, water pipes, reservoirs, and waterworks, for the protection thereof, and to prevent unnecessary waste of water and the pollution thereof. * * * (General Code, 1912.)

3970. *Jurisdiction to prevent pollution of water supplies without corporate limits.*— * * * the corporation so extending and establishing any part of its waterworks outside of its limits shall have the same power and jurisdiction to prevent or punish pollution of or injury to the water so conveyed or injury to the works or any portion thereof as it has within the limits of such corporation. (General Code, 1912.)

3971. *Waterworks in contiguous municipality.*—A municipality owning waterworks whose territory is contiguous to that of another municipality, with the assent of such other municipality may establish and maintain such portion of its waterworks as it deems advisable within the limits of such other municipality * * *. (General Code, 1912.)

3972. *Jurisdiction to prevent pollution of water supplies in such case.*— * * * A municipality so establishing a part of its waterworks within the limits of such other municipality shall have jurisdiction to prevent or punish the pollution of or injury to water so conveyed or of the stream or source from which it is obtained or any injury to any portion of the waterworks so located within the limits of such other municipality. (General Code, 1912.)

4414. *Penalty for violation of health laws, etc.*—Whoever violates any provision of this chapter [board of health, secs. 4404–4426] or any order or regulation of the board of health made in pursuance thereof, or obstructs or interferes with the execution of such order, or willfully or illegally omits to obey such order, shall be fined not to exceed \$100 or imprisoned for not to exceed 90 days, or both; but no person shall be imprisoned under this section for the first offense, and the prosecution shall always be as and for a first offense unless the affidavit upon which the prosecution is instituted contains the allegation that the offense is a second or repeated offense. (General Code, 1912.)

4415. *Violation by a corporation.*—If such violation, obstruction, interference, or omission be by a corporation, it shall forfeit and pay to the proper municipality a sum not to exceed \$200, to be collected in a civil action brought in the name of the municipality. Any officer of such corporation having authority over the matter and permitting such violation shall be subject to fine or imprisonment, or both, as heretofore provided. The judgment herein authorized being in the nature of a penalty, or exemplary damage, no proof of actual damages shall be required, but the court or jury, finding other facts to justify recovery, shall determine the amount by reference to all the facts, culpatory, exculpatory, or extenuating, adduced upon the trial. (General Code, 1912.)

4420. *Regulation of cesspools, privies, etc.*—The board of health shall abate and remove all nuisances within its jurisdiction. * * * Except in cities having a building department, or otherwise exercising the power to regulate the erection of buildings, the board of health may regulate the location, construction, and repair of water-closets, privies, cesspools, sinks, plumbing, and drains. In cities having such departments or exercising such power, the council by ordinance shall prescribe such rules and regulations as are approved by the board of health and shall provide for their enforcement. (General Code, 1912.)

4421. *Regulation of pens, stables, scurage, etc.*—The board of health may also regulate the location, construction, and repair of yards, pens, and stables, and the use, emptying, and cleaning thereof, and of water-closets, privies, cesspools, sinks, plumbing, drains, or other places where offensive or dangerous substances or liquids are or may accumulate. * * * (General Code, 1912.)

4464. *Regulation of sale of ice for domestic use.*—No ice shall be cut to be sold or used for domestic purposes in a municipality from a pond, lake, creek, or river within the limits of such municipality unless a permit therefor is first obtained from the board of health thereof. No person shall sell or deliver ice in a municipality for domestic purposes unless a permit therefor is first obtained from the board of health thereof. Such board may refuse a permit or revoke a permit theretofore granted when, in its judgment, such ice would be detrimental to public health. (General Code, 1912.)

4465. *Prohibiting sale and bringing in of impure ice.*—The board of health may prohibit the sale or use of any ice for domestic purposes within the limits of the municipality when, in its judgment, it is unfit for use and the use thereof would be detrimental to public health. The board may prohibit, and, through its officers, stop, detain, and prevent the bringing of any such ice for the purpose of sale or use for domestic purposes into the limits of the municipality and in the same manner stop, detain, and prevent the sale of such ice for domestic purposes within the limits of the municipality when, in its judgment, the use thereof would be detrimental to public health. (General Code, 1912.)

4466. *Penalty.*—Whoever violates any provision of the preceding two sections or an order or regulation of the board of health made in pursuance thereof, shall be fined not to exceed \$100. (General Code, 1912.)

12406. *Poisoning water supplies.*—Whoever * * * willfully poisons a well, spring, cistern, or reservoir of water, shall be imprisoned in the penitentiary not less than 2 years nor more than 15 years. (General Code, 1912.)

12525. *Use of poison for purpose of catching fish in certain waters.*—Whoever trespasses upon lands or rights in lands of another lying in or bordering upon a natural or artificial pond or brook less than 10 miles in length into which have been introduced brook trout, speckled trout, brown trout, landlock salmon, California salmon, or other fish by artificial propagation or actual importation from other waters for the purpose of fishing for, catching, or killing fish, * * * or willfully places poison or other substance injurious to the health of such fish, in a pond or brook described in this section for the purpose of capturing or harming such fish therein * * * shall be fined not less than \$10 nor more than \$100, and for each subsequent offense shall be fined not less than \$25 nor more than \$200 or imprisoned not less than 30 days nor more than 6 months, or both. (General Code, 1912.)

12526. *Owner or agent must make complaint.*—Prosecutions for a violation of any provision of the next preceding section shall be instituted only upon the complaint of the person or his agent upon whose lands or rights in lands or waters the trespass has been committed. (General Code, 1912.)

12602. *Putting soap, alkali, etc., into wells, etc.*—Whoever maliciously puts soap, alkali, or other material which will tend to interfere with or render unusually dangerous the generating of steam into a steam boiler, tank, well, cistern, pipe, hose, or other receptacle where such soap, alkali, or other material is liable to be drawn or pumped into a steam boiler or generator with intent to injure or damage another person or to delay or retard the running of an engine, locomotive, or machine shall be imprisoned in the penitentiary not less than 1 year nor more than 10 years or fined not less than \$100 nor more than \$500. (General Code, 1912.)

12640. *Punishment for nuisance of polluting watercourses.*—Whoever * * * corrupts or renders unwholesome or impure a watercourse, stream, or water * * * shall be fined not more than \$500. (General Code, 1912.)

12647. *Throwing refuse, oil, or filth into lakes, streams, or drains.*—Whoever intentionally throws, deposits, or permits to be thrown or deposited, coal dirt, coal slack, coal screenings, or coal refuse from coal mines, refuse or filth from a coal-oil refinery or gas works, or whey or filthy drainage from a cheese factory into a river, lake, pond, or stream, or a place from which it may wash therein, or causes or permits petroleum, crude oil, refined oil, or a compound, mixture, residuum of oil or filth from an oil well, oil tank, oil vat, or place of deposit of crude or refined oil to run into or be poured, emptied, or thrown into a river, ditch, drain or watercourse, or into a place from which it may run or wash therein, upon conviction in the county in which such coal mine, coal oil refinery, gas works, cheese factory, oil well, oil tank, oil vat, or place of deposit of crude or refined oil is situated, shall be fined not less than \$50 nor more than \$1,000. (General Code, 1912.)

12648. *Fine and costs are a lien.*—Such fine and costs shall be a lien on such oil well, oil tank, oil refinery, oil vat, or place of deposit, and the contents thereof until paid and such oil well, oil tank, oil refinery, oil vat, or place of deposit and the contents thereof may be sold for the payment of such fine and costs upon execution duly issued for that purpose. (General Code, 1912.)

12649. *Depositing dead animals, offal, etc., in water.*—Whoever puts the carcass of a dead animal or the offal from a slaughter house, butcher's establishment, packing house or fish house, or spoiled meat, spoiled fish, or other putrid substance or the contents of a privy vault upon or into a lake, river, bay, creek,

pond, canal * * * shall be fined not less than \$10 nor more than \$50, and in default of the payment of such fine and costs, shall be imprisoned not more than thirty days. (General Code, 1912.)

12650. *Contents of privies must be buried at distance of springs, etc.*—The next preceding section shall not prohibit the deposit of the contents of privy vaults and catch basins into trenches or pits not less than 3 feet deep excavated in a lot, field or meadow, the owner thereof consenting, outside of the limits of a municipal corporation and not less than 30 rods distant from a dwelling, well, or spring of water, lake, bay, pond, canal, run, creek, brook, or stream of water, public road, or highway, provided that such contents so deposited are forthwith covered with at least 12 inches of dry earth; nor prohibit the deposit of such contents in furrows, as specified for such trenches or pits * * *. (General Code, 1912.)

12651. *Contents of privies may be buried in city where board of health consents.*—The board of health of a municipal corporation may allow such contents to be deposited within corporate limits into such trenches, pits, or furrows. (General Code, 1912.)

12654. *Defiling spring or well.*—Whoever maliciously puts a dead animal, carcass, or part thereof, or other putrid, nauseous, or offensive substance into, or defouls a well, spring, brook, or branch of running water, or a reservoir of a waterworks, of which use is or may be made for domestic purposes, shall be fined not less than \$5 nor more than \$50, or imprisoned not more than 60 days, or both. (General Code, 1912.)

12657. *Corporations may be prosecuted for nuisance.*—Corporations may be prosecuted by indictment for violation of any provision of this subdivision ["Nuisances," secs. 12646-12662] of this chapter, and in every case of conviction under such provisions, the court shall adjudge that the nuisance described in the indictment be abated or removed within a time fixed, and, if it is of a recurring character, the defendant shall keep such nuisance abated. (General Code, 1912.)

12783. *Putting dead animals in canals.*—Whoever willfully places, or causes to be placed, a dead animal in a canal or slack-water pool belonging to the State shall be fined not less than \$5 nor more than \$20. Such offender may be prosecuted before any justice of the peace in any county where he may be found. (General Code, 1912.)

12784. *Jurisdiction of municipality to prevent water pollution.*—Whoever pollutes a running stream, the water of which is used for domestic purposes by a municipality, by putting therein a putrid or offensive substance, injurious to health, shall be fined not less than \$5 nor more than \$500. The director of public service or board of trustees of public affairs of a municipal corporation shall enforce the provisions of this section. The jurisdiction of a municipal corporation to prevent the pollution of its water supply and to provide penalty therefor, shall extend 20 miles beyond the corporation limits. (General Code, 1912.)

14134. *Putting refuse matter into canals prohibited.*—No hay, straw, manure, or other litter of any kind, shall be deposited in any part of either of the canals of this State, nor on either of the banks thereof. * * * (General Code, 1912.)

[LAWS, 1917, P. 522.]

SECTION 1. *Creating State department of health.*—There is hereby created a State department of health, which shall exercise all the powers and perform all the duties now conferred and imposed by law upon the State board of health. * * *

(REVISED LAWS, 1910; SUPPLEMENT, 1915.)

473a. *City may close roads leading to acquired reservoir site.*—Any city or town, having acquired possession by purchase, condemnation, gift, or otherwise, of a reservoir site for a public water supply, is hereby authorized and empowered to close to travel any section line or public road leading into or through such reservoir site. (Supplement, 1915.)

473b. *Unlawful to damage fences inclosing reservoir site.*—It shall be unlawful for any person [to] cut, damage, or otherwise interfere with any fences inclosing any reservoir site, supplying any city or town with water; and any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 or by imprisonment in the county jail for not less than 30 days, or by both such fine and imprisonment. (Supplement, 1915.)

478. *Protection of water supplies outside of city limits.*—Any city or town in this State, securing its water supply from a stream or reservoir located outside of its corporate limits, shall have the power, and it is hereby authorized, to designate, by ordinance, through its mayor and council or other lawmaking body, a district to be known as a water district; said water district to be designated by metes and bounds, and to embrace any lands directly or indirectly flowing or shedding water into any such stream or reservoir, in the discretion of said city or town; and said city or town, through its mayor and council or other lawmaking body, shall have the power, and is hereby authorized, to enforce any rules and regulations made by the State commissioner of health, the county superintendent of public health, or the city superintendent of public health for the protection of any such water supply. (Revised Laws, 1910.)

2001. *Punishment of misdemeanor.*—Except in cases where a different punishment is prescribed by this chapter ["Crimes and punishments," secs. 2082-2842], or by some existing provisions of law, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding one year or by a fine not exceeding \$500, or both such fine and imprisonment. (Revised Laws, 1910.)

2521. *Carcasses of animals dying of infectious diseases not to be buried along watercourse.*— * * * It shall further be unlawful to bury any such carcass [of any domestic animal dying of any contagious or infectious disease] * * * in any land along any stream or ravine, where it is liable to become exposed through erosion of the soil, or where such land is any time subject to overflow. * * * (Revised Laws, 1910.)

2522. *Putting carcasses into wells, springs, etc., forbidden.*—It shall be unlawful for any person to leave or deposit, or cause to be deposited or left, the carcass of any animal, whether the same shall have died from disease or otherwise, in any well, spring, pond, or stream of water * * *. (Revised Laws, 1910.)

2523. *Violation of sections 2521 and 2522 a misdemeanor.*—Any person who violates the two preceding sections shall be guilty of a misdemeanor. (Revised Laws, 1910.)

2528. *Gas-factory wastes not to be deposited in public waters.*—Every person who throws or deposits any gas tar, or refuse of any gas house or factory, into any public waters, river, or stream, or into any sewer or stream emptying into

* Volume from which law was copied is indicated at the end of each section.

any such public waters, river, or stream, is guilty of a misdemeanor. (Revised Laws, 1910.)

3301. *Contaminating waters with lime, sawdust, drugs, etc., prohibited.*—No person shall deposit, place, throw, or permit to be deposited, placed or thrown, any lime, dynamite, poison, drug, sawdust, crude oil, or other deleterious substance in any of the streams, lakes, or ponds of this State, and any person violating the provisions of this section shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail not exceeding one year.¹ (Supplement, 1915.)

6787. *Rules and regulations to be made and enforced by State commissioner of health.*—The State commissioner of health shall have power to make and enforce any and all needful rules and regulations for the prevention and cure, and to prevent the spread of, any contagious, infectious, or malarial diseases among persons; * * * to remove or cause to be removed any dead, decaying, or putrid body, or any decayed, putrid, or other substance, that may endanger the health of persons or domestic animals * * *. (Revised Laws, 1910.)

6810. *Punishment for pollution of water supplies.*—Whoever willfully and maliciously deposits excrements, or foul or decaying matter, or in any manner corrupts any spring or reservoir or other source of water used for domestic purposes, or destroys or injures any pipe, conductor of water, or other property pertaining to an aqueduct, or aids or abets in such trespass, shall be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not more than 30 days in jail, or by both such fine and imprisonment. (Revised Laws, 1910.)

6812. *Violation of regulations of State board of health, etc.*—Any person who shall knowingly violate any of the provisions of this article, or any lawful rule or regulation of the State board of health, or any rule or regulation of any inferior board of health, herein authorized to be made, shall be guilty of a misdemeanor, and on conviction, except as otherwise provided in this article ["Board of health," secs. 6786-6819 of chapter on "Public health and safety"], shall be punished by a fine of not less than \$10 and not more than \$50, or imprisonment in the county jail not more than 30 days, or both such fine and imprisonment. (Revised Laws, 1910.)

OREGON.

[LORD'S OREGON LAWS, 1910.]

2237. *Polluting water for domestic use with sewage unlawful.*—Any person who shall put any sewerage (sic), drainage, refuse, or polluting matter, as either by itself or in connection with other matter will corrupt or impair the quality of any well, spring, brook, creek, branch, or pond of water, which is used or may be used for domestic purposes, shall be deemed guilty of a misdemeanor.

2238. *Animal carcass, etc., not to be placed in water for domestic use.*—If any person shall put any dead animal carcass, or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious, or offensive substance into, or in any other manner not herein named defouls, pollutes, or impairs the quality of any spring, brook, creek, branch, well, or pond of water, which is or may be used for domestic purposes, * * * he shall be deemed guilty of a misdemeanor.

¹ This section appears under the game and fish laws.

2239. *Penalty for violating sections 2237 and 2238.*—Any person violating the provisions of this act [secs. 2237-2239] shall, upon conviction, be fined not less than \$10 nor more than \$50, or be imprisoned not less than 5 days nor more than 25 days, or by both fine and imprisonment. Justices of the peace shall have jurisdiction of offenses committed against the provisions of this act.

2240. *Polluting water used for domestic purposes or to which live stock have access unlawful.*—If any person or persons shall put any dead animal's carcass, or part thereof, or any excrement, putrid, nauseous, decaying, deleterious, or offensive substance, in any well, or into any spring, brook, or branch of running water, of which use is made for domestic purposes, or to which any cattle, horses, or other kind of stock have access, every person so offending shall, on conviction thereof, be fined in any sum not less than \$3 nor more than \$50.

2241. *Polluting water used for municipal supply in adjoining State.*—Any person who shall place or cause to be placed within any watershed from which any city or municipal corporation of any adjoining State obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute, or impair the quality of said water supply, or the owner of any dead animal who shall knowingly leave or cause to be left the carcass or any portion thereof within any such watershed in such condition as to in any way corrupt or pollute such water supply, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine in any sum not exceeding \$500.

2243. *Putting carcass in rivers, etc., unlawful.*—If any person or persons shall put any part of the carcass of any dead animal into any river, creek, pond, * * * or if the owner or owners thereof shall knowingly permit the same to remain in any of the aforesaid places to the injury of the health or to the annoyance of the citizens of this State, or any of them, every person so offending shall, on conviction thereof, be fined in a sum of not less than \$2 nor more than \$25, and every 24 hours during which said owner may permit the same to remain thereafter shall be deemed an additional offense against the provisions of this act.

2237. *Putting lime, poison, etc., into streams illegal without permit.*¹—* * * (b) It shall be unlawful to place, or cast, or pass, or allow to be cast, or flow, or passed, any gas, lime, cocculus indicus, or extract therefrom, or any other substance poisonous to fish, in any lake, river, stream, pond, bay, or other waters within the boundaries of this State, without first obtaining an order permitting it to be done from the board of county commissioners of the county in which it is desired to use the poison, as hereinafter provided.

(c) It shall be unlawful to take, or kill, or injure any fish in any lake, river, stream, pond, bay, or other waters within the boundaries of this State * * * by means of lime, cocculus indicus, or extract therefrom, or other poison, without first obtaining an order of the county commissioners of the county permitting it to be done as hereinafter provided.

(d) Having in possession any trout, salmon, or other game fish under circumstances which make it reasonable to believe that they were taken and killed by means of lime or cocculus indicus or extract therefrom, or other poison, * * * shall justify the arrest of the person or persons so having the fish in their possession; and it shall then be incumbent upon such persons to prove and show that the fish were taken and killed by lawful means.

(e) Every person who aids or abets * * * in putting any lime, cocculus indicus, or extract therefrom, or other poison, in any lake, river, stream, pond, bay, or other waters within the boundaries of this State contrary to the provisions of this section, or who aids or abets in taking or killing any fish in

¹ See below, sec. 5209.

this State contrary to the provisions of this section, or who aids or abets in taking or securing any fish in this State which he knows or has reason to believe have been killed or injured contrary to the provisions of this section, shall be deemed guilty of violating this section, and upon conviction shall be punished as hereinafter provided.

(g) Whenever the owner of any lake or pond in this State desires to get rid of and kill the fish known as German carp in said lake or pond, he shall file a verified petition with the county commissioners of the county stating in what section, township, and range the lake or pond is situated, and with what waters it connects, and his reasons for wishing to kill the fish. He shall truly and particularly state what other kinds of fish are in the lake or pond. If the county commissioners are satisfied that there are no fish other than German carp, catfish, suckers, and such like worthless fish in the lake or pond, and that the same has no outlet whereby the poison can escape into other waters, the commissioners shall make an order permitting the person to put lime or other substance in the lake or pond for said purpose. If any person use lime or other poison in any water within the boundaries of this State, without first obtaining such order, or contrary to such order, he shall be deemed to have violated this section, and upon conviction shall be punished as hereinafter provided.

(h) Every person who desires to obtain permission to use * * * lime, or poison, under provisions of this section, shall serve upon the fish commissioner or State game and forestry warden of this State a certified copy of his petition not less than 10 days before the hearing of the petition. Such service may be made personally upon the fish commissioner or State game and forestry warden, or by registered mail, and the proof of service shall be filed with the commissioner. The fish commissioner or State game and forestry warden or any person interested may oppose the granting of the order, and the same may be reviewed.

(i) Any person or persons violating any of the provisions of this section shall be tried in the circuit court of the county wherein such offense shall have been committed, and upon conviction shall be both fined and imprisoned. If it is his first conviction for violating the provisions of said section, he shall be fined not less than \$200, or by imprisonment in the county jail not less than 30 days nor more than one year, or by both such fine and imprisonment. If he is convicted of violating said section a second time, or oftener, he shall then be fined not less than \$1,000 nor more than \$5,000, and shall be imprisoned in the penitentiary not less than one year nor more than three years for each repeated offense.

3302. *Municipality of adjoining State may condemn lands to protect water supply.*—Any municipal corporation of any State adjoining the State of Oregon may acquire title to any land or water right within the State of Oregon, by purchase or condemnation, which lies within any watershed from which said municipal [corporation] obtains or desires to obtain its water supply.

4000. *County boards to enforce State board regulations.*—* * * It shall be the duty of the county boards of health to enforce all rules and regulations of the State board of health in their respective counties which may be issued from time to time for the preservation of the public health and for the prevention of endemic, epidemic, and contagious diseases * * *.

4700. *Penalty for violation of preceding sections.*—Any person or persons, any board of health, or the officers of any corporation who shall violate any of the

¹ State board of health is authorized specifically only to make and enforce quarantine regulations. Sec. 4087 reads in part: "It [the State board of health] shall make, and is hereby empowered to enforce, such quarantine regulations as seem best for the preservation of the public health."

provisions of this act [secs. 4695-4700] shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$10 nor to exceed \$100.

5269. *Placing poison, etc., in waters containing salmon and other food fishes.*—It shall be unlawful for any person or persons to throw or cast or pass, or cause or permit to be thrown or cast or passed, in any waters of the State in which salmon fish of any kind, or other food fishes, are wont to be, any lime, drug, powder, medicated bait, gas, or cocculus indicus, or any other substance deleterious to fish, * * * for the purpose of catching, killing, or destroying any salmon or any food fish.¹

5270. *Blood or offal of fish, etc., not to be deposited near dams in streams containing salmon and other food fishes.*—It shall be unlawful for any person to place in any stream of this State where salmon run or exist within the distance from any dam, fishway, or object in which the taking of salmon is prohibited by law, any blood or offal of salmon or fish, or any other substance or matter or contrivance that will frighten or drive salmon, or with intent to drive or frighten them from or out of that part of the waters of any stream in which it is unlawful to fish for or take the same.

5271. *Penalty for violating section 5270.*—Any person violating the provisions of this act [secs. 5270-5271] shall be punished by a fine of not less than \$50 or not more than \$1,000, or by imprisonment in the county jail not to exceed six months.

5346. *Depositing in water of matter injurious to shellfish forbidden.*—It shall be unlawful for any person to deposit into, or allow to escape into, or cause or permit to be deposited into, or escape into any of the public waters of this State, any substance of any kind whatever, which will or shall in any manner injuriously affect the life, growth, or flavor of oysters or other shellfish in or under said waters.

6525. *What use of water is a public one.*—The use of the water of the lakes and running streams of the State of Oregon for general rental, sale, or distribution, for purposes of irrigation and supplying water for household and domestic consumption and watering live stock upon dry lands of the State, is a public use, and the right to collect rates or compensation for such use of said water is a franchise. * * *

[GENERAL LAWS OF 1911, CHAP. 8.]

SECTION 1. *Discharge of sewage into North Umpqua River and tributaries prohibited.*—Any person or persons who shall put any sewage, drainage, refuse, or polluting matter, or any dead animal carcass, or part thereof, excrement, putrid, nauseous, decaying, deleterious, or offensive substance, which, either by itself or in connection with other matter, will corrupt or impair the quality of the water for domestic or municipal purposes, into the water of the North Umpqua River, or the tributaries thereof, above the Winchester Power Dam, in Douglas County, Oreg., said dam being located between the points, to wit, where said river is crossed by the Oregon & California Railroad and the county bridge spanning said stream 1,500 feet, more or less, east of said railroad crossing, or allow any such substance to escape into, or place any such substance in such position that it shall escape or be carried into said waters, or in any other manner not herein named, shall befoul, pollute, or impair the qualities of such waters for domestic or municipal purposes, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided.

¹ See section 2337 above.

STREAM POLLUTION.

SEC. 2. *Penalty.*—Any company, corporation, or private individual violating any of the provisions of this act shall, upon conviction thereof, be fined in the sum of not less than \$10 nor more than \$100 or imprisoned in the county jail not less than 5 nor more than 50 days, or both such fine and imprisonment, in the discretion of the court.

SEC. 3. *Jurisdiction.*—Courts of the justice of the peace shall have concurrent jurisdiction with the circuit courts of this State in the trial of all proceedings under this act, and it shall be the duty of the county health officer of Douglas County, Oreg., to enforce the provisions of this act.

[GENERAL LAWS OF 1911, CHAP. 45.]

SECTION 1. *Discharge of sewage into Deschutes River or tributaries prohibited.*—It shall be unlawful for any person or persons, company, association, or corporation to put or deposit in the Deschutes River in the State of Oregon, of any tributary thereof, or artificial canal or ditch in which the waters of said Deschutes River runs, any sewage, refuse, waste, or polluting matter, or any dead animal carcass or part thereof, or any matter which either by itself, or in connection with any other substance, will corrupt or impair the quality of the water of said river for domestic or municipal purposes, or to place any such substance in such position that it shall escape or be carried into said waters by the action of the elements or otherwise.

SEC. 2. *Penalty.*—Any person or persons, company, association, or corporation violating the provisions of this act shall, upon conviction thereof, be punished by a fine of not less than \$25 nor more than \$500, or by imprisonment in the county jail not less than 10 days nor more than three months, or by both such fine and imprisonment.¹

[GENERAL LAWS OF 1913, CHAP. 14.]

SEC. 19. *Leaving carcass within one-half mile of running water.*—Any person who shall knowingly leave the carcass of any domestic animal which he has owned or had in charge * * * within one-fourth mile of any running stream of water for longer than fifteen hours without burying or burning the same, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$50 nor more than \$250.²

[GENERAL LAWS OF 1913, CHAP. 232.]

SEC. 42. (a) *Lumber waste, dyes, chemicals, decaying substances, etc., not to be deposited in streams.*—No person, or the proprietor, operator, agent, superintendent, or employee of any railroad company, saw mill, or other lumber or manufacturing concern, or any pulp mill, wood-saw, tannery, woolen mill, dye works, chemical works, slaughterhouse, or any manufacturing concern, or any steamboat, or any other water craft shall cast or suffer or permit any sawdust, planer shavings, wood pulp, or other lumber waste, or any element or chemical extracted therefrom, or any slashing of trees or brush, or any oil, coal tar, petroleum or extract therefrom, or any dye, or chemical to be thrown, cast or discharged in any manner, or to deposit the same where high water will take or carry same, into the waters of the State of Oregon.³

¹ Contains emergency clause, excepting it from the powers of the referendum, because of the polluted condition of the Deschutes River.

² Substantially the same as sec. 5660 of Lord's Oregon Laws, repealed by this act.

³ Substantially like sec. 2338 of Lord's Oregon Laws, repealed by this act.

(b) *Dead animal carcass, etc., not to be put into waters of State.*—Any person who shall put any dead animal carcass, or part thereof, manure, putrid, decaying or deleterious substance in any of the waters of the State of Oregon, or who in any manner not herein named, pollutes or impairs the quality of any spring, brook, creek, branch, or pond of the State of Oregon inhabited by fish shall be guilty of a misdemeanor and punished as hereinafter provided.

SEC. 62. (b) *Penalty.*—Unless otherwise specifically provided, any person violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$25 or more than \$500 and costs of such suit or action, or by imprisonment in the county jail in the county wherein such unlawful act was committed for not less than 30 days or more than six months, or both such fine and imprisonment.

[GENERAL LAWS OF 1915, CHAP. 73.]

SEC. 1. *Approval of State board of health required for use of new water supplies.*—Any incorporated town or city in the State desiring to provide a new water supply for drinking or culinary purposes or any person or corporation who shall undertake to provide a new water supply for a town or city or for any number of persons exceeding 10 families or a total of 50 persons shall, before performing any work on the ground (other than making examination or surveys for the preparation of provision of such water supply), submit to the State board of health plans showing the source of the supply, and the transmission and distribution systems, with further information as to the amount proposed to be taken and transmitted, the drainage areas from which the waters are to be derived, the purity and wholesomeness of the supply, the kind and character of the works for gathering, storing and transmitting the water, and the number of persons to be supplied, together with any additional data which the board of health may require as in its judgment proper to enable it to pass intelligently upon the effect of such water supply upon the public health. No such work shall be undertaken or proceeded with until the board of health shall have approved such plans, either as originally offered or as modified pursuant to its requirements.

SEC. 2. *Approval of State board of health required for constructing sewage-disposal plants, etc.*—Any city or town in the State proposing a sewer system or any individual or corporation proposing to install a system of sewerage or disposal of waste products for the use of more than five families or 50 persons shall, before undertaking any work on the ground other than making surveys and preliminary plans, submit to the State board of health the full plans and specifications for the system, showing particularly the location of the outfall and the streams or other places of final disposal, and the method, if any, for the reduction, purification, or use of the sewage. No such plan shall be proceeded with or work done thereon until the plans and specifications either as originally proposed or modified are approved by the State board of health.

SEC. 3. *Penalty.*—Any violation of the provisions of this act shall be a misdemeanor and shall be punished by a fine of not more than \$500 or by imprisonment of not more than six months in the county jail, and every person in any way responsible for the proceeding with the actual construction of such work until the approval of the State board of health shall have been given thereon shall be deemed guilty of a violation of this act. The State board of health may, by proceeding in the proper court, enjoin any construction of sewerage or sewage disposal to which it has not given its approval.

PENNSYLVANIA.

[PURDON'S SUPPLEMENT OF 1915; BOROUGHS.]

393.¹ *Borough's power of appropriation for purposes of waterworks.*—Any borough desiring to erect waterworks, or to improve its water supply, may appropriate springs, streams, rivers, or creeks, and lands, easements, and rights of way, within or without its limits * * * (p. 5411).

394.² *Cannot deprive owner of use of water for domestic purposes.*—No water appropriated under the provisions of the preceding section shall be used in such manner as to deprive the owner thereof of the free use and enjoyment of the same for domestic or farm purposes (p. 5411).

[PURDON'S DIGEST, 1903; BURIAL GROUNDS.]

6. *Prohibiting cemeteries on watersheds.*—It shall be unlawful to use for the burial of the dead, any land, the drainage from which passes into any stream furnishing the whole or any portion of the water supply of any city, except beyond the distance of 1 mile from such city: *Provided, however,* That the prohibitions of this act shall not be enforceable against any land now devoted to burial purposes in which there shall have heretofore been burials and sales of burial lots³ (p. 559).

[SUPPLEMENT OF 1915; COUNTY COMMISSIONERS.]

66.⁴ *Surveys and plans of sewage-disposal plants required.*—Whenever the commissioners of any county of this Commonwealth shall resolve to construct any such * * * sewerage-disposal [sic] plants in accordance with the provisions of this act,⁵ they shall cause to be prepared surveys and plans of such * * * disposal plants * * * (p. 5805).

67.⁶ *To whom plans are to be presented.*—The county commissioners shall, thereupon, present such surveys, plans, and estimates, or a copy thereof, together with their petition, to the court of quarter sessions of the county; * * * and, after publication, * * * the said court shall cause the said application to be laid before the grand jury, when in session * * * (p. 5806.)

68.⁷ *Approval of State department of health required.*—After such plans and specifications have been prepared by said county commissioners, and before presentation thereof to the court or grand jury, as provided for in section 3 of this act [secs. 66 and 67 above], they shall be submitted to the State department of health; and approval by said State department of health of the same shall be first had in accordance with the act of assembly of April 22, 1905, entitled "An act to preserve the purity of the waters of the State, for the protection of the public health." (See "Gas and water companies," Supplement, secs. 14, 25, below, for text of law referred to.) (P. 5806.)

¹ Act of May 14, 1915, Public Laws, p. 312, sec. 3.

² *Ibid.*, sec. 4.

³ A note in the Supplement, p. 5498, referring to this section (which is sec. 1, Public Health Laws of 1895, p. 244), reads as follows: "This act is not a lawful exercise of police power and is therefore unconstitutional as local and special legislation. *Philadelphia v. West Laurel Hill Cemetery Co.*, 21 Dist. 75."

⁴ Act of June 5, 1915, Public Laws, p. 852, sec. 3.

⁵ *Ibid.*, sec. 4.

[DIGEST OF 1903: CRIMES.]

345. *Penalty for injury to waterworks.*—If any person shall, willfully and maliciously, injure any well sunk for the production of * * * water, or any tank intended or used for the storage of * * * or any line of pipe intended or used for the transportation of * * * water, or any machinery connected with such wells, tanks, or lines of pipe, he shall be guilty of a misdemeanor, and upon being thereof convicted, shall be sentenced to pay a fine, not exceeding \$1,000, and undergo imprisonment not exceeding three years, or both, or either, at the discretion of the court (p. 983).

[DIGEST OF 1903: FISH.]

123. *Drainage from coal and other ores, and from tanneries, to be retained in tanks.*—All persons engaged in any of the manufacturing interests of this State, accustomed to the washing of iron and other ores, and of coal preparatory to its use for coking, or in the tanning of hides by process in which vitriol is used, shall prepare a tank or other suitable receptacle into which the culm or coal dirt, the offal, refuse, and the tan bark and the liquor, or the water therefrom, may be collected, so that the sediment therefrom, so far as is practicable, may be thereby prevented from passing into or upon any of the rivers, lakes, ponds, or streams of the Commonwealth, under a penalty of \$50 for each offense, in addition to liability for all damage he or they have done to any individual owners or lessees on such waters (p. 1709).

[SUPPLEMENT OF 1915: FISH.]

32.¹ *Fishing with poisons forbidden.*—It shall be unlawful for any person to put or place in any waters within the Commonwealth any * * * poisonous substances whatsoever, or any drug, or any poison bait, for the purpose of catching, taking, killing, or injuring fish; or to allow any dyestuff, coal or gas tar, coal oil, sawdust, tan bark, cocculus indicus (otherwise known as fish berries), lime, vitriol, or any of the compounds thereof, refuse from gas houses, oil tanks, pipes, or vessels, or any deleterious, destructive, or poisonous substances of any kind or character, to be turned into, or allowed to run, flow, wash, or be emptied into, any of the waters aforesaid, unless it is shown to the satisfaction of commissioner of fisheries, or the court, that every reasonable and practicable means have been used to prevent the pollution of waters in question by the escape of deleterious substances. In the case of the pollution of waters by substances known to be injurious to fishes or to fish food, it shall not be necessary to prove that such substances have actually caused the death of any particular fish * * *. Any person violating any of the provisions of this section, shall, on conviction as provided in section 27² of this act, be subject to a fine of \$100³ (p. 6187).

104.⁴ *Use of poisons in Delaware River prohibited.*—It shall be unlawful for any person to put or place in the Delaware River below Trenton Falls any * * * poisonous substances whatsoever, or any drug, or any poison bait, for the purpose

¹ Act of May 1, 1909, Public Laws, pp. 353-374, sec. 16.

² Sec. 27 of this act (May 1, 1909, Public Laws, pp. 353-374) constitutes secs. 64 and 65 of the chapter on "Fish" in the Supplement of 1915. It does not appear necessary to quote the procedure given in those sections.

³ This section replaces and supplements sec. 33 of the chapter on "Fish" in the Digest of 1903, repeated by this act.

⁴ Act of May 1, 1909 (Public Laws, pp. 309-316, sec. 15), a different law from the one just quoted.

of catching, taking, killing, or injuring the fish; or to allow any dyestuff, coal or gas tar, coal oil, sawdust, tan bark, cocculus indicus (otherwise known as fish berries), lime, vitriol, or any of the compounds thereof, refuse from gas houses, oil tanks or vessels, or any deleterious, destructive, or poisonous substances of any kind or character, to be turned into, or allowed to run, flow, wash, or be emptied into, any of the waters aforesaid, unless it is shown that every practicable means have been used to prevent the pollution of waters in question by the escape of deleterious substances. In case of pollution of waters by substances known to be injurious to fishes or to fish food, it shall not be necessary to prove that such substances have actually caused the death of any particular fish. Any person violating any of the provisions of this section shall, on conviction thereof, be subject to a fine of \$200 (p. 6202).

120.¹ *Use of poisons in boundary lakes prohibited.*—It shall be unlawful for any person to put or place in any waters described in the first section of this act [lakes of more than 5,000 acres lying between Pennsylvania and any other State or foreign country and any water or bay adjacent to or connected with such lakes], over which this Commonwealth has jurisdiction, any • • • poisonous substances whatsoever, or any drug, or any poison bait, for the purpose of catching, taking, killing, or injuring fish; or to allow any dead fish, fish offal, contents of tannery vats, planing-mill shavings, dyestuff, coal or gas tar, coal oil, sawdust, tan bark, cocculus indicus (otherwise known as fish berries), lime, vitriol, or any of the compounds thereof, refuse from gas houses, oil tanks, pipes or vessels, or any deleterious, destructive, or poisonous substances of any kind or character, to be turned into, or allowed to run, flow, wash, or be emptied into, any of the waters aforesaid. In case of the pollution of waters by any substances known to be injurious to fishes or fish food, it shall not be necessary to prove that such substances have actually caused the death of any particular fish. Any person violating any of the provisions of this section shall, on conviction as provided in section 17² of this act, be subject to a fine of \$100 (p. 6205).

[SUPPLEMENT OF 1915; GAS AND WATER COMPANIES.]

14.³ *Definition of "waters."*—The term "waters of the State," wherever used in this act [secs. 14-25] shall include all streams and springs, and all bodies of surface and of ground water, whether natural or artificial, within the boundaries of the State (p. 6323).

15.⁴ *Filing of plans and surveys.*—Every municipal corporation, private corporation, company, and individual supplying or authorized to supply water to the public, within the State, shall, within 60 days after the passage of this act, file with the Commissioner of Health a certified copy of the plans and surveys of the waterworks, with a description of the source from which the supply of water is derived; and no additional source of supply shall thereafter be used, without a written permit from the commissioner of health, as hereinafter provided (p. 6323).

16.⁵ *Written permit from commissioner of health required for construction of waterworks, etc.*—No municipal corporation, private corporation, company, or

¹ Act of Apr. 18, 1913 (Public Laws, p. 100, sec. 5)

² Sec. 17 of this act (Apr. 18, 1913, Public Laws, p. 100) constitutes secs. 141 and 142 of the chapter on "Fish" in the Supplement of 1915. It does not appear necessary to quote the procedure given in those sections.

³ Act of Apr. 22, 1905, Public Laws (pp. 260-263, sec. 1).

⁴ Ibid. (sec. 2).

⁵ Ibid. (sec. 3).

individual shall construct waterworks for the supply of water to the public within the State, or extend the same, without a written permit, to be obtained from the commissioner of health if, in his judgment, the proposed source of supply appears to be not prejudicial to the public health. The application for such permit must be accompanied by a certified copy of the plans and surveys for such waterworks, or extension thereof, with a description of the source from which it is proposed to derive the supply; and no additional source of supply shall subsequently be used for any such waterworks without a similar permit from the commissioner of health.

When application shall be made for a permit, * * * it shall be the duty of the commissioner to proceed to examine the application, without delay, and, as soon as possible, he shall make a decision, in writing; and, within 30 days after such decision, the corporation, company, or individual making such application may appeal to any court of common pleas of the county, and said court shall, without delay, hear the appeal, and shall make an order approving, setting aside, or modifying such decision, or fixing the terms upon which said permit shall be granted. The penalty for failure to file copies of plans, surveys, and descriptions of existing waterworks, within the time hereinbefore fixed, and for the construction or extension of waterworks, or the use of an additional source of supply, without a permit from the commissioner of health shall be \$500, and further penalty of \$50 per day for each day that the works are in operation contrary to the provisions of this act, recoverable by the Commonwealth, at the suit of the commissioner of health, as debts of like amount are recoverable by law (p. 6323).

17.¹ *Forbidding pollution of streams with sewage.*—No person, corporation, or municipality shall place or permit to be placed, or discharged, or permit to flow into any of the waters of the State any sewage except as hereinafter provided. But this act shall not apply to waters pumped or flowing from coal mines or tanneries, nor prevent the discharge of sewage from any public sewer system owned and maintained by a municipality, provided such sewer system was in operation and was discharging sewage into any of the waters of the State at the time of the passage of this act. But this exception shall not permit the discharge of sewage from a sewer system which shall be extended subsequent to the passage of this act (p. 6324).

18.¹ *For the purpose of this act, sewage shall be defined as any substance that contains any of the waste products or excrementitious or other discharges from the bodies of human beings or animals.*

19.¹ *Permits to discharge sewage, how obtained.*—Upon application duly made to the commissioner of health by the public authorities having by law the charge of the sewer system of any municipality, the governor of the State, the attorney general, and the commissioner of health, shall consider the case of such sewer system, otherwise prohibited by this act from discharging sewage into any of the waters of the State, and, whenever, it is their unanimous opinion that the general interests of the public health would be subserved thereby, the commissioner of health may issue a permit for the discharge of sewage from any such sewer system into any of the waters of the State, and may stipulate in the permit the conditions on which such discharge may be permitted. Such permit, before being operative, shall be recorded in the office of the recorder of deeds for the county wherein the outlet of the said sewer system is located. Every such permit for the discharge of sewage from a sewer system shall be revocable or subject to modification and

¹ Act of Apr. 22, 1905 (Public Laws, pp. 260-263, sec. 4).

² *Ibid.* (sec. 5).

change by the commissioner of health on due notice after an investigation and hearing and an opportunity for all interested therein to be heard thereon being served on the public authorities of the municipality owning, maintaining, or using the sewage system.

The length of time after receipt of the notice, within which the discharge of sewage shall be discontinued may be stated in the permit, but in no case shall it be less than one year, or exceed two years, and if the length of time is not specified in the permit it shall be one year. On the expiration of the period of time prescribed, after the service of a notice of revocation, modification, or change, from the commissioner of health, the right to discharge sewage into any of the waters of the State shall cease and terminate; and the prohibition of this act against such discharge shall be in full force, as though no permit had been granted, but a new permit may thereafter again be granted, as hereinbefore provided (p. 6324).

20.¹ *Report of municipalities to commissioner of health.*—It shall be the duty of the public authorities, having by law charge of the sewer system, of every municipality in the State, from which sewage was being discharged into any of the waters of the State at the time of the passage of this act, to file with the commissioner of health, within four months after the passage of this act, a report of such sewer system, which shall comprise such facts and information as the commissioner of health may require. No sewer system shall be exempt from the provisions of this act, against the discharge of sewage into the waters of the State, for which a satisfactory report shall not be filed with the commissioner of health, in accordance with this section (p. 6325).

21.² *Penalty for discharge of sewage without permit.*—The penalty for the discharge of sewage from any public sewer system into any of the waters of the State, without a duly issued permit, in any case in which a permit is required by this act, shall be \$500, and a further penalty of \$50 per day for each day the offense is maintained, recoverable by the Commonwealth, at the suit of the commissioner of health, as debts of like amount are recoverable by law. The penalty for the discharge of sewage from any public sewer system into any of the waters of the State without filing a report in any case in which a report is required to be filed shall be \$50, recoverable by a like suit (p. 6325).

22.³ *Commissioner may prevent discharge of sewage.*—All individuals, private corporations, and companies that, at the time of the passage of this act, are discharging sewage into any of the waters of the State may continue to discharge such sewage unless, in the opinion of the commissioner of health, the discharge of such sewage may become injurious to the public health. If at any time the commissioner of health considers that the discharge of such sewage into any of the waters of the State may become injurious to the public health, he may order the discharge of such sewage discontinued (p. 6325).

23.⁴ *Discharge of sewage must be discontinued within 10 days after commissioner's order.*—Every individual, private corporation, or company shall discontinue the discharge of sewage into any of the waters of the State within 10 days after having been so ordered by the commissioner of health (p. 6325).

24.⁵ *Penalties.*—Any individual, private corporation, or company that shall discharge sewage, or permit the same to flow, into the waters of the State, contrary to the provisions of this act, shall be deemed guilty of a misde-

¹ Act of Apr. 22, 1905, Public Laws (pp. 260-263, sec. 6).

² *Ibid.* (sec. 7).

³ *Ibid.* (sec. 8).

⁴ *Ibid.* (sec. 9).

⁵ Act of Apr. 22, 1905, Public Laws (pp. 260-263, sec. 10).

menor, and shall, upon conviction, be punished by a fine of \$25 for each offense, and a further fine of \$5 per day for each day the offense is maintained, or by imprisonment not exceeding one month, or both, at the discretion of the court (p. 8325).

25.¹ *Appeal from decision of health commissioner.*—Any order or decision, under this act, of the commissioner of health, or that of the governor, attorney general, and commissioner of health, shall be subject to an appeal to any court of common pleas of the county wherein the outlet of such sewer or sewer system, otherwise prohibited by this act, is situated; and said court shall have power to hear said appeal, and may affirm or set aside said order or decision, or modify the same, or otherwise fix the terms upon which permission shall be granted. But the order or decision appealed from shall not be superseded by the appeal, but shall stand until the order of the court, as above (p. 8326).

[DIGEST OF 1903; HEALTH]

5. *Regulations of State department of health.*—* * * It [the State department of health²] shall codify and suggest amendments to the sanitary laws of the Commonwealth, and shall have power to enforce such regulations as will tend to limit the progress of epidemic diseases (p. 1828).

19. *Commissioner of health to examine water supply of cities of first class.*—The State board of health [commissioner of health] shall be and is hereby authorized to examine the water supplied to cities of the first class of this Commonwealth for domestic uses, for the purpose of ascertaining whether said water is free from contamination by human excrement (p. 1831).

20. *If water supply is found contaminated, commissioner of health to ascertain cause, and abate same.*—Should it be ascertained by said examination that the water supplied, as aforesaid, is so contaminated, the said board [commissioner] is hereby authorized and directed to make such investigation as will ascertain the cause thereof, and whether the water is so polluted, and to this end may, by its [his] duly accredited officers or agents, enter upon any property where the cause of said pollution is believed to exist, provided a warrant for said purpose shall first have been obtained from a magistrate or justice of the peace of the county wherein said property is situated, upon an affidavit of an officer or agent of the said board [commissioner] that there is information or belief of said pollution. And if it shall be found that said pollution is due to the fault or neglect of any person or corporation owning or occupying said property, to thereupon adopt such measures for the removal or abatement of said causes, so that the water supplied, as aforesaid, may be made free from contamination by said excrement (p. 1831).

21. *Method of abatement when contamination amounts to common nuisance.*—In order to carry out the provisions of the foregoing section, the said board [commissioner] is hereby authorized and directed to notify, or cause to be notified, every person or corporation upon whose property, or in connection with whose business said contamination exists or has its origin, which is found by said board [commissioner] to pollute the water supplied, as aforesaid, and is thereby a nuisance, to remove or abate the same within a reasonable time, to be stated in said notice. Should the party notified fail to comply with the requirements of said notice, the said nuisance shall be abated by the local board of health, if there be one, under the direction of the said State board [commissioner of health], immediately upon the expiration of the time fixed

¹ Ibid. (sec. 11).

² Called in this section "State board of health and vital statistics."

by said notice. If, however, the local board should neglect or refuse to act with due diligence, or if no such local board should exist, then the said State board [commissioner of health] shall cause said nuisance to be abated. All expenses incidental to the abatement of said nuisance shall be charged against the owner or owners of the premises whereon such nuisance exists, and a lien may be filed for the work done and materials furnished against said premises. In case of any legal proceedings under this act, the cost shall be ascertained and the liability therefor determined by and made part of the judgment or decree of the court in each case (p. 1831).

22. *When contamination does not amount to common nuisance.*—If, however, the cause of contamination by human excrement is incidental to the conduct of some legitimate business, or of a municipality, and does not amount to a common nuisance, the said board [commissioner] shall cause a petition to be presented to the court of common pleas of the county in which the said business is carried on, or the municipality is situated, asking for the abatement of the matter complained of, which petition shall set forth fully the causes for such action; and thereupon a citation shall issue to the party or parties complained of, directing them to show cause why the matter complained of should not be abated. The party or parties thus complained of shall file an answer within ten days after the service of the said citation. The matter shall then be proceeded with, and heard before the said court of common pleas, in the same manner as injunction proceedings are now conducted, and after a full hearing of the parties and witnesses, the court shall make such order as the circumstances demand (p. 1832).

24. *Act not to repeal existing laws.*—This act shall not be construed to impair or repeal any act or acts applicable to any local board of health, nor shall it impair or repeal any existing provision of law in regard to the pollution of springs, streams, ponds, water courses, or rivers, or the power and jurisdiction of any court relating to the prevention or removal of such pollution (p. 1832).

[SUPPLEMENT OF 1915; HEALTH.]

11.¹ *Regulations to be drawn up by advisory board.*—It shall be the duty of the advisory board [a board of six members appointed by the governor] * * * to draw up such reasonable orders and regulations as are deemed by said board necessary for the prevention of disease and for the protection of the lives and health of the people of the State, and for the proper performance of other work of the department of health (p. 6336).

16.² *General duties of commissioner of health.*—It shall be the duty of the commissioner of health to protect the health of the people of the State, and to determine and employ the most efficient and practical means for the prevention and suppression of disease³ (p. 6337).

18.⁴ *Abatement of nuisances.*—The commissioner shall have power and authority to order nuisances, detrimental to the public health, or the causes of disease and mortality, to be abated and removed, and to enforce quarantine regulations⁵ (p. 6337).

¹ Act of Apr. 27, 1905, Public Laws (pp. 312-317, sec. 5).

² Ibid. (sec. 8).

³ Secs. 16 and 18 are given because they are cited in *Dixon v. Sheffer* (24 York 141, 1910) as giving the commissioner of health power to issue an order requiring the discontinuance of a discharge of sewage into a branch of a creek, if, in his opinion, the same is a public nuisance or likely to injure the public health. As a rule general powers of this nature, which frequently give the health authorities power to prevent the pollution of streams, are omitted from this appendix. The interpretation of the law by the courts is more important than the text of the law.

⁴ Act of Apr. 27, 1905, Public Laws (pp. 312-317, sec. 9).

19.¹ *Health employees may enter premises.*—If the owner or occupant of any premises, whereon any nuisance detrimental to the public health exists, fails to comply with any order of the commissioner of health for the abatement or removal thereof, the commissioner, his agents or employees, may enter upon the premises to which such order relates and abate or remove such nuisance (p. 6337).

20.² *Act not to apply to waters pumped or flowing from coal mines or tanneries.*—The expense of such abatement or removal shall be paid by the owner or occupant of such premises, or by the person who caused or maintained such nuisance * * * *Provided, however,* That this act shall not apply to waters pumped or flowing from coal mines or tanneries (p. 6337).

20.³ *Violation of regulations of department of health.*—Every person who violates any order or regulation of the department of health, or who resists or interferes with any officer or agent thereof in the performance of his duties in accordance with the regulations and orders of the department of health, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than \$100, or by imprisonment not exceeding one month, or both, at the discretion of the court (p. 6339).

[Digest of 1903; ICE.]

1. *Penalty for defiling ice ponds, etc.*—Any person or persons who shall willfully throw, place or cast upon the ice forming, formed or being upon any pond, stream, river, creek or canal in this commonwealth, owned or leased in whole or in part for the production of ice for sale, any timber, stone, earth or other substance, or enter upon, in anywise injure or defile the ice thereon forming, formed or being, such person or persons shall be deemed guilty of a misdemeanor, and shall and may, upon the information of any such owner, lessee, his agent or attorney, on conviction thereof before any alderman or justice of the peace in the county where the offense is committed, be fined in a sum not less than \$5 or more than \$50, with costs of suit; the fines to go to the school fund of the district in which the offense was committed; and in default of payment of said fine, with costs of the suit, the party convicted may and shall, by said alderman or justice of the peace, be committed to the jail of the said county, for not less than 20 nor more than 60 days, there to remain until discharged by due course of law * * * (p. 1868).

[SUPPLEMENT OF 1915; MUNICIPAL CORPORATIONS.]

177.⁴ *Jurisdiction of municipal waterworks.*—Any city owning and operating a waterworks system is hereby authorized and empowered to enter, by any of its employees, upon private lands, through which may pass any stream or streams of water supplying such city, for the purpose of patrolling the drainage area of such stream or streams, and making investigations or inquiries pertaining to the condition of the stream or streams, sanitary or otherwise; *Provided, however,* That any injury or damage done to the property so entered upon shall be paid by such city (p. 6751).

(179-189. Under these sections the Supplement of 1915 repeats the act of April 22, 1905, Public Laws, 260-263, given above (in part) under "Gas and water companies," Supplement of 1915, sections 14-25.)

¹ Act of Apr. 27, 1905, Public Laws (pp. 312-317, sec. 9).

² *Ibid.* (sec. 16).

³ Act of May 2, 1905, Public Laws, p. 350.

[DIGEST OF 1903; MUNICIPAL CORPORATIONS—FIRST CLASS.]

935. *Purchase of land, etc., in adjoining counties for protection of Philadelphia water supply.*—It shall be lawful for the city of Philadelphia to purchase and hold in fee simple, or for any less estate, any springs or streams of water, or any water powers or privileges, or any lands, tenements, and hereditaments, to which any springs or streams of water, or any water powers, may be appurtenant, situate, or being wholly or in part in any one or more of the counties adjoining the city and county of Philadelphia, and to build, construct, and erect thereupon waterworks, reservoirs, store lakes, ponds, etc., for the collection, purification, and preservation of the water from such springs and streams * * * (p. 2973).

939. *Penalty for corrupting waters of Schuylkill River and springs and streams leading thereto, etc.*—Any person who shall willfully destroy or injure, in any manner, the pipes, aqueducts, cisterns, reservoirs, hydrants, or any of the works belonging to said city, erected in pursuance to this act [secs. 935-939], or shall willfully corrupt or otherwise render unwholesome the spring or springs, stream or streams of water, which shall be conveyed or brought into said reservoirs, works, aqueducts, etc., by said city, or shall, in any way, pollute or render noxious or offensive the said water, every such person so offending shall forfeit and pay a sum not less than \$5 nor more than \$100, at the discretion of the magistrate before whom sued for, and to be recovered with costs, in the corporate name of the city of Philadelphia, in the same manner as debts of \$100 or under are recoverable, the one half for the use of the person who shall give information and the other half for the use of the city; and if any person, against whom such judgment shall be rendered, shall neglect or refuse to pay the amount of such judgment, and no goods or chattels of such person can be found whereof to levy the same by execution, then such person or persons shall be committed to the jail of the county, where he shall have been tried and convicted, for any period not less than 1 nor more than 50 days, at the discretion of the justice rendering such judgment, and shall moreover remain liable for the full amount of damages to the said city, in any other action instituted by the city, and shall moreover be subject to indictment for the same (p. 2975).

(942-948. Under these sections the Digest of 1903 repeats act of May 2, 1800, Public Laws, p. 176, given above (in part) under "Health," Digest of 1903, sections 19-24.)

[DIGEST OF 1903; NAVIGATION.]

2. *Castings ballast, etc., into the Delaware River.*—If any person or persons whosoever shall cast into the tideway of the River Delaware, or into the River Schuylkill, from the lower falls thereof to its junction with the River Delaware, any ballast, cinders, ashes, or any heavy article¹ whatever, from any ship, vessel, steamboat or wharf, he or they so offending, for every such offense shall forfeit and pay a sum not exceeding \$100, to be sued for and recovered, with costs of suit, before an alderman of the city, or justice of the peace of the county of Philadelphia, or any court of record in this State * * * (p. 3231).

[DIGEST OF 1903; NUISANCE.]

4. *Polluting headrace of Fairmount waterworks.*—If any person or persons shall throw, cast, or willfully suffer to fall into the headrace of the waterworks

¹ Clean snow is not a heavy article contemplated by this section; but nothing should be thrown into the river that will pollute it. (War. Op. 1886, 94.)

at Fairmount, or into the water of the River Schuylkill, between the south line of Francis Street and the head arches of the said works, or into either of the reservoirs on Fairmount, any dead animal or any putrid and corrupt thing whatsoever, or any noxious or offensive matter of any kind, or if any person shall go in to swim or bathe in the said race or either of the said reservoirs or within the distance of one hundred yards of the said head arches or shall entice, throw, lead, or conduct any dog or animal therein, every such person shall forfeit and pay * * * (not less than \$5 nor more than \$50) (p. 3332).

5. *Throwing carrion or filth into the River Schuylkill.*—If any person or persons shall willfully take, lead, conduct, carry off, or throw, or shall cause to be taken, led, conducted, carried off or thrown into that part of the River Schuylkill which is between the dam at Flat Rock and the dam at Fairmount, near the city of Philadelphia, any carrion or carcass of any dead horse, or other animal or any excrement or filth from any slaughterhouse, vault, well, sink, culvert, privy, or necessary any offal or putrid or noxious matter from any dyehouse, stillhouse, tanyard, or manufactory or any matter or liquid calculated to render the water of said river impure, every such person shall, for each and every such offense forfeit and pay a sum not less than \$5 nor more than \$50, at the discretion of the magistrate, to be recovered, with costs of suit, in the same manner as debts under \$100 are by law recoverable, by any person who shall sue for the same before any justice of the peace within the county of Philadelphia, one-half to the use of the person prosecuting and suing, and the other half to the use of the mayor, aldermen, and citizens of Philadelphia (p. 3332).

(7. Under this section the Digest of 1903 repeats section 4 of act of April 11, 1890, Public Laws, p. 637, given above under "Municipalities—First class," Digest of 1903, section 939.)

[DIGEST OF 1903; OIL AND GAS WELLS.]

(17. Under this section the Digest of 1903 repeats section 1 of act of June 23, 1885, Public Laws 145, given above under "Crimes," Digest of 1903, section 345.)

[SUPPLEMENT OF 1915; RIVERS.]

18.¹ *Preservation of purity of streams.* * * * It shall be unlawful for any person, partnership, or corporation to place or discharge, or permit to be placed or discharged, in or into any of the running streams of this State, any anthracite coal, anthracite culm, or refuse from anthracite coal mine, or to deposit any such coal, or culm, or refuse upon the banks of such stream, where the same would be likely to slide into or be washed into such stream: *Provided, however,* That this act shall not apply to waters pumped or flowing from coal mines where the coal or culm, or refuse have been removed therefrom; or shall not prevent the discharge of sewerage [sic] from any public-sewer system, owned or maintained by any municipality in this Commonwealth (p. 7322).

19.² *Penalty.*—Any person, firm, or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and shall upon conviction be punished by a fine of \$100 for each offense, and a further fine of \$50 per day for each day the offense is maintained, or be imprisoned not exceeding one month, or both, at the discretion of the court (p. 7323).

¹ Act of June 27, 1913, Public Laws (p. 640, sec. 1).

² Ibid. (sec. 2).

[SUPPLEMENT OF 1915: WATER SUPPLY.]

(1-17. Under these sections Supplement of 1915 repeats act of April 22, 1905, Public Laws, pp. 200-203, given above under Gas and Water Companies, Supplement of 1915, secs. 14-25.)

(18-19. Under these sections, Supplement of 1915 repeats act of June 27, 1913, Public Laws, p. 640, given above under Rivers, Supplement of 1915, secs. 18 and 19.)

31.¹ *Water-supply commission.*—There is hereby created a water-supply commission of Pennsylvania, to consist of five members, three of whom shall, within 30 days after the passage of this act, be appointed by the governor, by and with the consent of the senate, to serve for four years from the time of their appointment, and the two remaining members of the commission shall be the commissioner of forestry and the commissioner of health, to be called and known as the water-supply commission of Pennsylvania (p. 7736).

33.² *Organization powers and duties.*—Immediately after the appointment and qualification of the members of the commission, they shall proceed to organize by electing a chairman and secretary. It shall be the duty of the commission to procure, as speedily as may be, all the data and facts necessary to advise them thoroughly of the situation of the water supply of the State, and adopt such ways and means of utilizing, conserving, purifying, and distributing such water supplies in such a way that the various communities of the State shall be fairly and equitably dealt with in such distribution: *Provided, however,* That the local distribution of water within the limits of an incorporated village, town or city is not to fall within the jurisdiction of this commission (p. 7736).

35.³ *To approve waterworks plans.*—Hereafter no letters patent shall be issued to any company desiring to be incorporated for the purpose of supplying water to the public, in any community in the Commonwealth, until said application is first submitted to and has received the approval of a majority of the said water-supply commission (p. 7737).

37.⁴ *Annual report.*—It shall be the further duty of the said commission to collect such information relative to the existing conditions of the water supply of the State, and to make an annual report to the governor and the legislature, based upon such investigation, recommending such future legislation as in its opinion is necessary for the conservation, development, purification, equitable distribution, and supply of the waters of the State, and in particular to such communities as are now greatly in need of extended facilities for this purpose (p. 7737).

56.⁵ *Definition.*—The term "water resources," as used in this act, includes all rivers, streams, and underground waters, and all bodies of surface water, either in whole or in part, within the State (p. 7739).

57.⁶ *Duties of water-supply commission.*—It shall be the duty of the water-supply commission of Pennsylvania to make a complete inventory of all the water resources of the Commonwealth; and to collect all pertinent data, facts, and information in connection therewith; and to classify, tabulate, record, and preserve the same; * * * and, generally, to devise all possible ways and means to conserve and develop the water supply and water resources of the Commonwealth for the use of the people thereof. To the end and object afore-

¹ Act of May 4, 1905, Public Laws (p. 385, sec. 1).

² Ibid. (sec. 3).

³ Act of May 4, 1905, Public Laws (p. 385, sec. 5).

⁴ Ibid. (sec. 7).

⁵ Act of July 25, 1913, Public Laws (p. 1233, sec. 1).

⁶ Ibid. (sec. 2).

said, the said commission shall study, consider, and determine upon a public policy with regard * * * to the supply of water for domestic and industrial use * * * (p. 7736).

86.¹ *Limitation on appropriation of streams for water supply.*—Any city or borough desiring to erect waterworks, or to improve its water supply, may, for such purpose, appropriate springs, streams, known as rivers or creeks, lands, easements and rights of way, whether within its territorial limits or not; * * * *Provided*, That no waters or springs, appropriated under the provisions of this act, shall be used in such manner as to deprive the owner or proprietor thereof of the free use of and enjoyment of the same, at all times, for any domestic, dairy, stock, or farm purposes² (p. 7743).

PHILIPPINE ISLANDS.

[PENAL CODE.]

ART. 342. *Pollution of springs, cisterns, etc.*—The penalty prescribed by the next preceding article [a penalty ranging from arresto mayor in its maximum degree to prisión correccional in its minimum degree and a fine of not less than 325 and not more than 3,250 pesetas] shall also be imposed upon:

2. Any person who shall throw into any spring, cistern, or river, the water of which is used for drinking purposes, anything which makes the water dangerous to health.

ART. 581. *Defouling of watering places.*—A fine of not less than 15 and not more than 70 pesetas and censure shall be imposed upon:

5. Any person who shall throw any dead animals, garbage, or rubbish in any street or other public place where the deposit of such things is forbidden, or shall defoul any spring or watering place.

[COMPILATION OF ACTS, 1908.³]

728. (h) *Regulations of Philippine Health Service.*—It [Philippine Health Service] shall have power and authority to make and enforce regulations for preventing and suppressing contagious or epidemic diseases; to abate nuisances endangering the public health; to remove the cause of any special disease or mortality * * *. (Act No. 157, sec. 4, as amended by Act No. 1150, sec. 13, and Act No. 1760, secs. 7-8.)

731. *Remedying unsanitary conditions in Manila.*—The director of health shall inspect or cause to be inspected * * * waterworks, drainage and sewer systems, streams, and esteros within the limits of the city of Manila,⁴ and shall cause to be prepared plans for and estimates of the cost of remedying unsanitary conditions discovered by him. * * * (Act No. 690, sec. 1, as amended by Act No. 1150, sec. 12, and Act No. 1407, sec. 5.)

733. *Ordinances to be drafted for municipal board of Manila.*—Subject to the approval of the secretary of the interior,⁵ the * * * [Philippine Health Service], acting in its capacity as a local board of health for the city of Manila, shall draft and forward, through the secretary of the interior, to the municipal

¹ Act of Apr. 15, 1907, Public Laws (p. 90, sec. 1).

² Sec. 86 appears superseded by secs. 393 and 394 under Boroughs (act of May 14, 1915, Public Laws, p. 312, secs. 3 and 4); but it has been included in this appendix since it is given in the Supplement of 1915.

³ As this compilation was not adopted in lieu of the original acts, the act number is given at the end of each section.

⁴ The Philippine Health Service serves also as the local board of health for the city of Manila.

⁵ Philippine Health Service is under the secretary of the interior.

board for enactment, health ordinances for that city. * * * (Act No. 1150, sec. 1.)

735. *Ordinances to prohibit pollution of streams, etc.*—The ordinances drafted by the * * * [Philippine Health Service] may provide for—

(d) Protection from infection of all public and private water supplies and sources, and prohibition of the use of water of dangerous character for domestic purposes. Ordinances enacted for the purpose of protecting the purity of the water supply of Manila shall apply to and be enforced over all territory within the drainage area of such water supply or within one hundred meters of any reservoir, conduit, canal, aqueduct, or pumping station used in connection with the city water service. (Act No. 1150, sec. 3.)

(f) Cleansing and preservation in a sanitary condition of the harbor of Manila, and of rivers, esteros, canals, or other waterways and their shores included within the city limits. (Act No. 1150, sec. 3.)

(r) Definition, declaration, and prohibition of nuisances dangerous to the public health; location and use of public drains, sewers, latrines, and cesspools, and construction and use of private drains, sewers, latrines, and cesspools. (Act No. 1150, sec. 3.)

858. *Rules and regulations.*—Subject to the approval of the secretary of the interior the director of health may make such rules and regulations as he may deem necessary * * * upon any question affecting the maintenance of public health and the suppression and extermination of epidemics of contagious, infectious, or communicable diseases of a dangerous character, and the rules and regulations thus made and approved shall have the force and effect of law: * * * (Act No. 1458, sec. 36.)

3505. *Use of poisonous substance in taking fish.*—The use of any poisonous substance liable to cause the death of fishes for the taking of the same, or the placing of any such substance in fresh or marine waters of the Philippine Islands, where it may cause the death of fishes and is intended to cause such death, shall be unlawful. *Provided*, That the secretary of the interior may issue permits for the use of poisonous substances in taking fish in limited numbers for scientific purposes only. (Act No. 1499, sec. 2, as amended by act No. 1685, sec. 2.)

3506. *Penalty.*—Any person violating the provisions of sections 3504 to 3507, inclusive, hereof shall, for each offense, be punished by a fine of not more than ₱200 or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court. All * * * poisons, boats, tackle, apparel, furniture, or other apparatus used to aid in the violation of said sections shall be forfeited to the government. * * * (Act No. 1499, sec. 3.)

3507. *Disposition of fine.*—The person giving information that has led to the conviction of any person under the provisions of this and the last three preceding sections shall receive one-half the fine imposed, and it shall be the duty of the court in rendering the judgment of conviction to ascertain and declare the name of the informer entitled to receive one-half of the fine imposed. (Act No. 1499, sec. 4.)

[Act No. 2408, 1915.]

Sec. 3. *Regulations for public water supplies, etc.*—The powers, duties, and jurisdiction of the council of hygiene [of the Philippine Health Service] shall be as follows:

(f) To propose regulations on hygiene or sanitation relative to * * * factories, mills, * * * public water supplies, public bathhouses, wells, cisterns, cemeteries, * * *.

SEC. 11. *Duties of Philippine Health Service.*—All medical, surgical, and sanitary work of a public nature, which is supported from the funds [sic] of the Philippine Islands, shall hereafter be performed by the Philippine Health Service: ¹ *Provided*, That nothing in this section shall be construed as in any way curtailing or infringing upon the activities of the University of the Philippines in its educational work, the activities of the bureau of science, or those of the medical division of the Philippine constabulary, or of the maritime quarantine service, as now provided for by law or regulations.

SEC. 13. *Duties of director of health.*—* * * He [the director of health] shall perform all the duties and functions, and exercise all the powers, not in conflict with this act, which are now reposed in the director of health, or which may hereafter be conferred upon him by law.

[ART. NO. 2590. 1916.]

SEC. 15. *Depositing of trade wastes, etc., into waters of Philippine Islands.*—It shall be unlawful to place, cause to be placed, discharge or deposit, or to pass or place where it can pass into the waters of the Philippine Islands any petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen or residuary product of petroleum, or carbonaceous material or substance, or any refuse, liquid or solid, from any oil refinery, gas house, tannery, distillery, chemical works, mill, or factory of any kind, or any sawdust, slabs or factory refuse, or any material substance deleterious to fish or plant life: *Provided*, That nothing contained in this section shall be construed to prohibit the retting of maguey, sisal, sansevieria, and its similars in the rivers and on the seashore.

SEC. 17. *Penalty.*—Any person violating this act or any order or regulation deriving force from its provisions shall be punished for each offense by a fine of not more than \$100.

PORTO RICO.

[REVISED STATUTES AND CODES, 1911.]

119. *Throwing carcasses of diseased animals in rivers.*—Every person who knowingly throws or places, or causes to be thrown or placed, in any river, stream, canal, or other running water, or any lake, or into the sea within 10 miles of the shore, the carcass of an animal which has died of disease, or which has been slaughtered as diseased, or suspected of disease, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not exceeding \$200, or imprisonment for one month in jail, or to both fine and imprisonment. (Laws, 1907, p. 85, sec. 5.)

498. *Depositing mud, etc., in harbors.*—No person or persons shall deposit in any harbor stones, gravel, ballast, cinders, ashes, dirt, mud, or any other substance, under penalty of a fine not exceeding \$500, or imprisonment in jail not exceeding six months. (Laws, 1906, p. 47, sec. 7.)

2390. *Public waters defined.*—The following are public or of public ownership:

1. Waters which rise continuously or intermittently on lands of public ownership.
2. Continuous or intermittent waters of springs and creeks which run through natural channels.
3. Rivers. (Law of Waters, 1879,² art. 4.)

¹ This act establishes the Philippine Health Service in place of the previous board of health.

² Promulgated in Porto Rico in 1886.

2512 (as amended by Laws, 1915, p. 53). *Use of running waters for domestic purposes.*—Any person may make use of the waters running along their natural and public channels for drinking purposes or for washing clothes, vessels, and other objects, for bathing or for watering or bathing horses and cattle, subject to police, sanitary, and other regulations and laws. * * * (Law of Waters, 1879, art. 126, as amended by Laws, 1915, p. 53.)

2514. *Washing of clothes in canals, ditches, etc., if use of water does not necessitate state of purity.*—* * * all persons may wash clothing, vessels, or other objects in canals, ditches, or uncovered aqueducts of public waters, even though they be the temporary property of the grantees, provided the margins are not injured thereby and that the use to which the water is put does not require that it be in a state of purity. But cattle or horses shall be bathed or watered only at the places set aside for this purpose. (Law of Waters, 1879, art. 128.)

2605. *Pollution of waters by industrial establishments.*—If an industrial establishment shall communicate to the waters substances or properties injurious to health or vegetation, the governor of the Province shall order a technical examination made, and if the damage be established he shall order that the industrial work be suspended until the owners thereof adopt the proper remedy. The fees and cost of the examination shall be defrayed by the person making the complaint if it should be found to be groundless and otherwise by the owner of the establishment.

If the owner or owners should not have adopted the proper remedy within a period of six months, it shall be understood that they desire to discontinue the operation of their industry. (Law of Waters, 1879, art. 219.)

2606. *Grants for use of waters by industries may be revoked where waters become polluted.*—Grants for the use of public waters by industrial establishments shall be made in perpetuity and under the condition that if at any time the waters acquire properties prejudicial to health or vegetation by reason of the industry for which they were granted the forfeiture of the grant shall be declared without any right to indemnity by reason thereof. (Law of Waters, 1879, art. 220.)

2608. *Waters may be used for fish hatcheries, etc., if health or lower uses of waters are not injured.*—The Governor General may grant the use of public waters for the purpose of forming lakes, pools, or reservoirs intended for fish ponds or hatcheries, provided no injury is caused to health or to other lower uses under prior acquired rights. (Law of Waters, 1879, art. 222.)

2613. *Jurisdiction over private waters.*—With regard to waters of private ownership, the administration shall confine itself to exercising over the same the necessary surveillance to prevent any danger to public health or to the security of persons and property. (Law of Waters, 1879, art. 227.)

5422. *Penalty for misdemeanors.*—Except in case where a different punishment is prescribed by this code [Penal Code], every offense declared to be a misdemeanor is punishable by imprisonment in jail not exceeding two years or by a fine not exceeding \$250, or by both. (Penal Code, sec. 16.)

5642. *Penalty for poisoning water supplies.*—* * * every person who willfully poisons any spring, well, or reservoir of water is punishable by imprisonment in the penitentiary for a term not less than one nor more than 10 years. (Penal Code, sec. 221.)

5777 (as amended by Laws, 1912, p. 103). *Definition of nuisance.*—Anything which is injurious to health * * * or is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of

persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin, * * * is a public nuisance, * * *. (Penal Code, sec. 329, as amended by Laws, 1912, p. 103.)

5778. *Penalty for maintaining public nuisance.*—Every person who maintains or commits any public nuisance the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor. (Penal Code, sec. 330.)

5780. *Prohibiting placing dead animals in watercourses.*—Every person who puts the carcass of any dead animal, or the offal or filth from any slaughterhouse, pen, or butcher shop, into any river, creek, pond, reservoir, stream, * * * and any person who puts any filth or carcasses of any dead animal or any offal of any kind in or upon the borders of any stream, pond, lake, or reservoir, from which water is drawn for the supply of the inhabitants of any city, village, or municipality, so that the drainage from the filth, carcass of any animal, or offal of any kind may be taken up by or in such stream, lake, or reservoir, or who by any other means fouls or pollutes the waters of any such stream, pond, lake, or reservoir, is guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in jail not exceeding one year or by fine not exceeding \$1,000, or by both fine and imprisonment, in the discretion of the court. (Penal Code, sec. 332.)

5800. *Violation of sanitary rules and regulations.*—Every person * * * who shall violate any * * * sanitary or other regulations issued by the director of health, charities, and corrections, or by any other person, body, or board always under authority of law, shall be guilty of a misdemeanor, and shall be punishable accordingly. (Penal Code, sec. 357, as amended by laws, 1911, p. 68.)

5904. *Putting filth into canals and reservoirs.*—Every person * * * who shall empty or place, or caused [sic] to be emptied or placed, into any such canal, ditch, flume, or reservoir [used for conveying water for manufacturing, agricultural, irrigating, generation of power, or domestic purposes] any rubbish, filth, * * * is guilty of a misdemeanor. (Penal Code, sec. 510.)

[Laws, 1912, p. 125.]

SEC. 12. *Sanitary rules and regulations.*—It shall be the duty of the insular board of health to act as an advisory and legislative body in respect to all matters pertaining to the public health, and it shall prescribe all sanitary rules, regulations, and ordinances required by this act, which shall govern in all the municipalities of Porto Rico, with a view to preventing and suppressing contagious and epidemic diseases, * * * and dealing with any other service affecting public health, such as the water service, * * * drainage, * * * factories and workshops, * * * cleaning of cesspools and sinks, * * * cemeteries, * * *. It shall * * * prescribe rules and regulations for * * * guarding from contamination all streams from which water for drinking or domestic purposes is taken.

SEC. 13. *Approval of executive council required—Promulgation of rules and regulations.*—* * * All such rules and regulations, when approved by the executive council, shall be promulgated by the governor of Porto Rico and shall be published in two newspapers of general circulation in the island, and thereupon and thereafter shall have the force and effect of law.

SEC. 14. *If the insular board fails to prescribe rules and regulations.*—In the event that the insular board of health should at any time fail or unreasonably delay to prescribe the sanitary rules and regulations required by this act,

then it shall be the duty of the executive council, when such failure is brought to its attention by the governor, to formulate the necessary sanitary rules and regulations as herein provided, * * *.

SEC. 15. *Courts to take notice of adoption and publication.*—All courts are required to take judicial notice of the adoption of such rules and regulations and of the publication thereof required by this act.

SEC. 33. *Penalty for violation of the rules and regulations.*—Any person violating any sanitary regulation put in force as herein provided shall be punished by a fine of not less than \$1 nor more than \$100 or by imprisonment from 1 to 30 days or with both penalties, at the discretion of the court.

[64TH U. S. CONGRESS, SESS. II., CHAP. 145.]

SECTION 1. *To whom act applies.*—The provisions of this act shall apply to the Island of Porto Rico and to the adjacent islands belonging to the United States, and waters of those islands; and the name Porto Rico as used in this act shall be held to include not only the island of that name but all the adjacent islands as aforesaid.

SEC. 13. *Department of health created.*—The following executive departments are hereby created: * * * a department of health, the head of which shall be designated as the commissioner of health.

SEC. 10. *Duties of commissioner of health.*—The commissioner of health shall have general charge of all matters relating to the conduct of maritime quarantine, and shall perform such other duties as may be prescribed by law.

[REGULATIONS, INSULAR BOARD OF HEALTH, JAN. 28, 1913.]

SEC. 15. *Requirement in regard to water-closets, cesspools, etc.*—In towns provided with aqueducts, sewers, or sewerage system, all houses and edifices must be provided with water-closets which have been approved and have therefore been accepted as serviceable and which have free discharge into the said sewer, to the exclusion of any other system of latrine. In towns not provided with aqueducts or sewerage system and where cesspools have to be used, the same shall be built at a distance of not less than 10 meters from wells, cisterns, bedrooms, and kitchens, or as far as possible therefrom within the limits of the property, but the director of sanitation shall be notified in order that he may dictate in each case the requirements of such construction. Said cesspools shall be kept proof against inundations from rainfall. In both cases said installations shall fulfill the requirements set forth in the regulations governing plumbing, approved September 5, 1912.

SEC. 16. *Cleaning and disinfecting of cesspools.*—The owner or agent of any house or edifice must have drains and cesspools cleaned before they get too full and overflow. He shall also see that said drains and cesspools are treated with quicklime, calcium chloride, creoline, or any other disinfectant, when the service of sanitation shall, for any special reason, so require it. He shall also see that any deficiencies in the construction of water-closets, latrines, drains, or cesspools which may be the cause of troublesome emanations be corrected.

RHODE ISLAND.

[GENERAL LAWS, REVISION OF 1909, CHAP. 118.]

1 (as amended by Public Laws of 1911, chap. 683). *Pollution of streams, etc.*—No person shall throw or discharge, or suffer to be thrown or discharged, into any well, spring, brook, lake, pond, reservoir, or stream used as a source

of water supply for drinking purposes by any city, town, district, institution, or company, or into any known tributary or feeder of any such well, spring, brook, lake, pond, reservoir, or stream, any sewerage [sic], drainage, refuse, or other noxious matter or thing tending to pollute or corrupt, or impairing or tending to corrupt the purity of the waters of any such well, spring, brook, lake, pond, reservoir, or stream, or any known tributary or feeder thereof, or render the same injurious to health, which waters shall be of the recognized standard of purity to be determined by the State board of health or other recognized authority; or bathe or wash any animal, clothing, or any other article in any such well, spring, brook, lake, pond, or reservoir: *Provided, however,* That the provisions of this section shall not interfere with nor prevent the enriching of land for agricultural purposes by the owner or occupant thereof if no human excrement is used thereon. Any person violating any of the provisions of this section shall be punished for each offense by a fine of not exceeding \$50, or by imprisonment for a term not to exceed 30 days, or both.

2. *Powers and duties of the State board of health under this chapter.*—The State board of health or the secretary of said board, when satisfied that any sewerage [sic], drainage, or refuse or polluting matter exists in a locality such that there is danger that said sewerage, drainage, or refuse or polluting matter may corrupt or impair the quality of said waters or render them injurious to health, may order the owner or occupant of the premises where said sewerage, drainage, or refuse or polluting matter exists to remove the same from said premises within such time after the serving of the notice prescribed in the next succeeding section as said board or secretary may designate; and if the owner or occupant neglects or refuses so to do he shall be fined \$20 for each day during which he permits said sewerage, drainage, or refuse or polluting matter to remain upon said premises after the time prescribed for the removal thereof.

3. *How notice is to be given, etc.*—Such notice shall be in writing, signed by the secretary of the State board of health or the person performing the duties of that official, and shall be served by any sheriff, deputy sheriff, or constable by reading the same in the presence or hearing of the owner, occupant, or his authorized agent, or by leaving a copy of the same in the hand or possession of, or at the last and usual place of abode of, said owner, occupant, or agent if within this State: *Provided, however,* That if said owner, occupant, or agent be a corporation incorporated in this State, said notice shall be served by leaving a copy thereof at the last and usual place of abode of the president or person performing the duties of president of said corporation. But if said premises are unoccupied, or the residence of the owner is unknown or without this State, or if the said owner is a corporation incorporated without this State, the notice may be served by posting a copy of the same on the premises and by advertising the same in some newspaper published in Providence County in such manner and for such length of time as the State board of health or the secretary thereof may determine.

4. *Prosecution.*—The secretary of the State board of health, when so directed by said board, shall prosecute for all violations of this chapter and shall not be required to give surety for costs upon complaints made by him; but the cities of Woonsocket and Pawtucket and the towns of Bristol and East Providence shall be directly liable to the State for the costs incurred in the prosecution for violation of this chapter in their respective cases.

5 (as amended by Public Laws of 1911, chap. 683). *Court jurisdiction.*—The superior court, upon the application of the mayor of any city, or the president of the town council of any town, or the executive officer of any district, institution, or company interested shall have jurisdiction in equity to enjoin the violation

of any of the provisions of this chapter and to enforce the orders of the State board of health, or of the secretary thereof, provided for in this chapter.

[GENERAL LAWS, REVISION OF 1909, CHAP. 144.]

6. *Escape of noxious material used in manufacture of gas into certain rivers.*—No person or corporation shall deposit in, or allow to escape into, or shall cause or permit to be deposited in, or allowed to escape into, the waters of Providence or Warren Harbors or Providence or Warren Rivers, any material used in connection with, or product of, the manufacture of gas, which may cause disagreeable odors or defile the surface of vessels, boats, or other property, or the shores of said Providence or Warren Harbors or Rivers, or injure the healthy growth of fish or shellfish in said waters. Every person or corporation violating the provisions of this section shall be fined for each offense \$100, one-half thereof to the use of the State and one-half thereof to the use of the complainant. It shall be the duty of the harbor commissioners to prosecute cases under complaints brought in accordance with this section.

11. *Dumping places in public tidewaters.*—They [harbor commissioners] shall regulate the depositing of mud, dirt, and other substances in the public tidewaters of the State, and shall prescribe the places where the same may be deposited; and every person who shall place or deposit mud, dirt, or other substances in said waters without obtaining proper authority therefor, shall be fined for each offense \$100, one-half thereof to the use of the State and one-half thereof to the use of the complainant.

17. *Waters excluded from provisions of section 11.*—The waters immediately bordering on the towns in the county of Newport, extending to and including ship channel, and the harbors in said county, excepting the waters immediately bordering on Prudence Island, are hereby exempted from the provisions of the preceding nine sections of this chapter.

[GENERAL LAWS, REVISION OF 1909, CHAP. 206, AS AMENDED BY PUBLIC LAWS OF 1910, CHAP. 577.]

1. *Substances injurious to shellfish not to be deposited in public waters.*—No person shall deposit in, or allow to escape into, or shall cause or permit to be deposited in, or allowed to escape into any of the public waters of this State, any substance which shall in any manner injuriously affect the growth or sale of the shellfish in or under said waters, or which shall in any manner affect the flavor or odor of such shellfish so as to injuriously affect the sale thereof, or which shall cause any injury to the public and private fisheries of this State.

2. *Penalty.*—Any person violating any of the provisions of this chapter shall, upon conviction thereof, be fined not less than \$500 or more than \$2,000, one-half thereof to the use of the complainant and one-half thereof to the use of the State: *Provided*, That in case of conviction upon prosecution by the commissioners of shell fisheries the whole of any fine imposed shall go to the use of the State.

3. *Civil damages.*—Every person violating any of the provisions of this chapter shall be liable to pay, to the party injured by such violation, double the amount of damages caused thereby, to be recovered in any action of the case in any court of competent jurisdiction. It shall not be necessary, before bringing suit for the recovery of such damages, for a criminal prosecution to have been first instituted for the violation of the provisions of this chapter, nor shall the recovery of damages under this section be a bar to such criminal prosecution.

9. *Inspection to determine sanitary condition of shellfish grounds.*—Said commissioners [commissioners of shellfisheries] shall inspect any or all the leased oyster grounds and other shellfish grounds within the State, at such times as they may deem advisable, to determine whether said grounds are in a proper sanitary condition for the production of shellfish for consumption as food.

[GENERAL LAWS, REVISION OF 1909, CHAP. 207.]

33. *Depositing of substances injurious to fish in streams and fresh water forbidden.*—No person shall place, deposit * * * any substance injurious to the health or life of fish in any stream or fresh-water pond within this State. * * * Every person violating any of the provisions of this section shall for each offense be fined not exceeding \$20 or be imprisoned not exceeding 30 days, or be both fined and imprisoned.

[GENERAL LAWS, REVISION OF 1909, CHAP. 211.]

1. *Depositing fish offal and certain trade wastes in tidewaters forbidden.*—Every person who shall throw into or deposit in, or cause to be thrown into or to be deposited in, any of the public tidewaters of the State or upon the shores of any such tidewaters any fish offal or any water impregnated with fish, unless the same be filtered in such manner as may be determined by the town council of the town wherein such deposit shall be made, and every person who shall cause any deleterious substance, resulting from the smelting or manufacture of copper or from other manufactures or from other sources which is destructive to fish or which repels them coming into the said public waters or which shall do anything which tends to drive them therefrom, to be emptied, deposited, or run into the said public waters shall forfeit \$100.

2. *Craft on which violations of chapter occur liable.*—Every vessel, craft, boat, or floating apparatus employed in the procuring of fish oil or in the dressing of bait for the mackerel fisheries or the dressing of fish for other purposes in violation of this chapter shall be liable for any forfeiture and costs resulting from prosecution hereunder and the same may be attached on the original writ and held as other personal property attached may be held to secure any judgment which may be recovered in any action brought to enforce any such forfeiture; and any person upon view of any offense in violation of this chapter may seize and detain any vessel, craft, boat, or floating apparatus, the same to be detained for a period not exceeding six hours.

3. *Penalty for boiling menhaden on vessels in tidewater.*—Every person who shall boil any menhaden fish or press any fish for the purpose of extracting oil therefrom on board of any vessel on any of the public tidewaters shall be fined not exceeding \$50.

[GENERAL LAWS, REVISION OF 1909, CHAP. 243.]

16. *Poisoning springs, etc.*—* * * every person who shall willfully poison any spring, well, or reservoir of water with such intent (to kill or injure any person), shall be imprisoned for life or for any term of years.

[PUBLIC ACTS OF 1915, CHAP. 1278.]

SEC. 6. *Damages for pollution of waters in constructing Providence water-works.*—* * * Relative to the work of construction of such reservoir or reservoirs or any works connected therewith [the act concerns the construction of waterworks, etc., for the city of Providence], said city shall not do,

or cause or suffer to be done, any act or thing which would result in the waters of said branch (north branch of Pawtucket River) being polluted to any greater extent than said waters would have been polluted without such construction work, and in case it fails to observe this provision, any person or corporation owning or operating any manufacturing establishment on said branch may recover its damages suffered thereby in an action of the case in any court of competent jurisdiction. * * *

Sec. 13. *Removal of cemeteries which would pollute water supply.*—In case any lands acquired by purchase or condemnation hereunder contain any burial ground, cemetery, graves, or places of human burial, and if any such places are to be flowed by water or are located so near to any such reservoir or waterway as to be liable to pollute or reduce the quality or value of any such waters as a potable water supply, said city shall remove the remains found in any such burial places. * * * Nothing in this act shall permit the condemnation of any lands, or of any estate, rights, or interests in any lands included within the present fence lines of the Glenwood Cemetery, situated in North Scituate, south of said Main Street. * * *

SOUTH CAROLINA.

[CIVIL CODE, 1912.]

1560 (as amended by Acts, 1917, p. 39). *Every water company to have analysis of water made.*—Every water company, whether owned by private individuals or corporations or by a municipality, shall have made, not less frequently than once in every three months, at its own expense by a chemist to be approved by the State board of health, a chemical analysis, and once every three months a bacteriological examination at its own expense by a biologist to be approved by the State board of health, of a sample of its water drawn from a faucet used for drinking purposes, packed and shipped in accordance with the instructions to be furnished by the secretary of the State board of health, and the result of such examination shall be verified by a statement under oath of the chemist or biologist making the same, and published at least once in a newspaper published in the town or city using said water, within ten days after receipt thereof; *Provided*, That in the town of Manning the said examination and analysis shall be made at least once in every year.

1601. *Water sheds to be inspected.*—As a check and as a guarantee of the faithful performance of the requirements laid down in this article (boards of health, under Title VIII, "Of the public health") the State board of health shall make or have made by its authorized agents, such inspections of the watersheds and such chemical and bacteriological examinations of the public water supplies of the State as may be deemed necessary to insure their purity. Should such inspections or examinations show condition or conditions dangerous to the public health, the secretary of the State board of health shall notify the mayor, the municipal health officer, and the superintendent or manager of the waterworks at fault, and demand the immediate removal of said dangerous condition or conditions. If at the end of 30 days after the service of said notice and demand, the said dangerous condition or conditions shall have not been removed to the extent that due diligence could accomplish such removal, the said secretary shall have printed in one or more of the local newspapers a plain statement of the facts for the information and protection of the citizens using the water; *Provided*, That nothing herein contained shall be construed to prohibit any municipality from imposing such additional tests and require-

ments as they may deem necessary, and the decision of the municipal authorities shall be supreme.

3027 (as amended by acts of 1916, p. 941). *Municipalities may enter lands, etc., to protect water supplies.*—* * * They [municipal corporations establishing or enlarging waterworks] shall also have the right to enter upon and condemn lands and tenements for the purpose of protecting the watersheds from contamination, nuisances, or any conditions which may be a menace to the public health, upon proper compensation being first made to the owner thereof.

[CRIMINAL LAW, 1912.]

404. *Penalty for violation of law regarding analysis and inspections of water supplies.*—* * * [Secs. 1500, 1600, and 1601 of the Civil Code, 1912, are given unaltered as a part of this section.]¹ Every water company, its managing officers and directors, and the mayor and aldermen of every city and town, who shall neglect or fail to comply with and carry out the provisions of this section, shall be guilty of a misdemeanor, and punished by a fine not exceeding \$100, or by imprisonment not exceeding 30 days for each and every offense.

757. *Unlawful to poison streams.*—It shall be unlawful to poison the streams or waters of the State in any manner whatsoever for the purpose of taking fish. The muddying of streams or ponds or the introduction of any substance which results in making the fish sick, so that they may be caught, is hereby declared to be poisoning in the sense of this act. (Acts of 1910, p. 576.) * * * For violation of this section the person or persons so violating shall be fined \$500, or imprisoned one year.

764. *Poisoning fish in artificial private ponds.*—Whenever any one shall have made or created an artificial pond on his own land, and shall put therein any fish, or the eggs of any fish or oysters, for the purpose of breeding and cultivating fish or oysters, and shall give notice thereof, by written or printed handbills, put up in public places near the said pond, any person or persons who * * * shall be guilty of committing any trespass upon any artificial fish pond by * * * poisoning the same, * * * upon conviction shall be deemed guilty of a misdemeanor and shall be subject to a fine of not less than \$20 nor more than \$100, or be imprisoned at the discretion of the court; which fine, if imposed, shall go one-half thereof to the informer and the other half thereof to the person or persons whose property shall have been injured; *Provided*, That nothing in this section shall be construed as applying to ponds used as water power for manufacturing purposes.

772. *Impurities not to be cast into fish streams.*—Should any person or persons cause to flow into or be cast into any of the creeks, streams, or inland waters of this State, any impurities that are poisonous to fish or destructive to their spawn, such person or persons shall, upon conviction thereof, be punished with a fine of not less than \$500, or imprisonment of not less than six months in the county jail; the fine to go one-half to the informer and the other half to the county.

[Acts of 1912, p. 744.]

SECTION 1. *Executive committee of State board of health to make and enforce rules for public health.*—The executive committee of the State board of health shall have the power to make, adopt, promulgate, and enforce reasonable rules and regulations from time to time * * * to regulate the methods of disposition of garbage or sewage and any like refuse matter in or near any incor-

¹ See above for sections 1500 and 1601.

porated town, city, or unincorporated town or village of the State; to provide for the thorough investigation and study of the causes of all diseases, epidemics and otherwise in this State, * * * to make separate orders and rules to meet any emergency not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious, and infectious diseases and other dangers to the public life and health: *Provided, however*, That nothing herein contained shall be construed as in anywise limiting any duty, power, or powers now possessed by or heretofore granted to the said State board of health or its executive committee by the statutes of this State, or as affecting, modifying, or repealing any rule or regulation heretofore adopted by said board.

Sec. 2. *Penalty for violation of rules.*—Any person who shall, after notice, violate, disobey, refuse, omit, or neglect to comply with any rule of said executive committee of the State board of health, made by it in pursuance of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding the sum of \$100, or be imprisoned for 30 days: * * *

SOUTH DAKOTA.

[REVISED POLITICAL CODE, 1903.]

1229. *Depositing of offal and emptying of sewage into streams, etc.—Powers of city.*—The city council shall have the following powers:

15. To regulate and prevent the throwing or depositing of ashes, offal, dirt, garbage, or any offensive matter * * * into any stream of water within the city limits or forming the boundary thereof * * *.

73. To construct and maintain sewer pipes through and upon private property, or in or along any stream of water, or to empty or discharge the sewerage [sic] of the city or any part thereof into any stream of water within or without the limits of the city, and for that purpose may condemn private property when necessary; *Provided*, That sewerage [sic] so emptied into any stream of water shall be so disposed of and managed as not to create any foul or noxious odors in the air over or along such stream.

1438. *Emptying of sewage into streams by towns.*—The board of trustees (of towns) shall have the following powers, viz:

24 (added by Session Laws of 1900, chap. 50). * * * to empty or discharge the sewage of the town or any part thereof into any stream of water within or without the limits of the town * * *: *Provided*, That sewage so emptied into any stream of water shall be so disposed of and managed as not to create any foul or noxious odors in the air over or along such stream.

2567. *Deterioration of water used for mining, domestic, etc., purposes not to affect rights of prior appropriator.*—The waters of the streams or creeks of the State may be made available to the full extent of the capacity thereof for mining, milling, agricultural or domestic purposes, without regard to deterioration in quality * * * so that the same do not materially affect or impair the rights of the prior appropriator.

[REVISED CIVIL CODE, 1903.]

278 (as amended by chapter 305, Session Laws of 1915). *Owner of land over which stream runs may not pollute water.*—The owner of the land owns water standing thereon, or flowing over or under its surface, but not forming a definite stream. Water running in a definite stream, formed by nature over or under the surface, may be used by him as long as it remains there; but he may not * * * pollute the same. * * *

[REVISED PENAL CODE, 1903.]

446. *Poisoning springs prohibited.*— * * * every person who willfully poisons any spring, well, or reservoir of water is punishable by imprisonment in the State prison not exceeding ten years, or in a county jail not exceeding one year, or by a fine not exceeding \$500, or by both such fine and imprisonment.

445. *Polluting streams with certain trade wastes prohibited.*—Every person who throws or deposits any gas tar, or refuse of any gas house or factory, into any public waters, river, or stream, or into any sewer or stream emptying into such public waters, river, or stream, is guilty of a misdemeanor.

446. *Depositing of offal, carcasses, etc., in streams or on banks prohibited.*—It shall be unlawful for any person, persons, company, or corporation to place or cause to be placed any manure, butcher's offal, carcasses of animals, or other deleterious substances into any river, stream, or lake in the State of South Dakota, or upon the banks thereof in such proximity that such substances may be washed into said water or watercourses.

447. *Penalty.*—Any violation of the provisions of this chapter [chap. 38, of crimes against the public health and safety, Revised Penal Code, 1903, secs. 441-480], is a misdemeanor, and the person, persons, company, or corporation so violating are deemed guilty thereof, and upon conviction shall be liable to a fine not less than \$10 nor more than \$100, and in addition thereto such offending person or persons shall be subjected to imprisonment in the county jail for the period of 30 days, unless he or they cause such deleterious substances to be removed.

456. *Violation of health laws or regulations.*—Every person who willfully violates any provision of the health laws, the punishment for violating which is not otherwise prescribed by those laws, or by this code, and every person who willfully violates or refuses or omits to comply with any lawful order, direction, prohibition, or regulation prescribed by any board of health or health officer, or any regulation lawfully made or established by any public officer under authority of the health laws, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$2,000, or both.

[SESSION LAWS OF 1913, CHAP. 169.]

Sec. 4 (as amended by Session Laws, 1917, chap. 353). *Regulations of State board of health.*—The said board [board of health and medical examiners] * * * shall have power as follows:

(2) To adopt, alter, and enforce reasonable regulations of permanent application throughout the whole or any portion of the State, or for specified periods in parts thereof, for the preservation of public health. Upon the approval of the attorney general and the due publication thereof, such regulations shall have the force of law, except insofar as they may conflict with a statute or with the charter or ordinances of a city of the first class upon the subject, and in and by the same the board may control, by requiring the taking out of licenses and permits, or by other appropriate means, any of the following matters:

(b) The business of scavengering and the disposal of sewage.

(c) The pollution of streams and other waters and the distribution of water by private persons for drinking or domestic use.

(A) The accumulation of filthy and unwholesome matter, to the injury of the public health, and the removal thereof.¹

[SESSION LAWS OF 1915, CHAP. 119.]

SEC. 53. *Board of commissioners have power to prevent throwing offal, etc., into streams.*—The board of commissioners [in cities under commission] shall have the following powers:

16. To regulate and prevent the throwing or depositing of ashes, offal, dirt, garbage, or any offensive matter * * * into any stream of water within the city limits or forming the boundary thereof * * *.

[SESSION LAWS OF 1915, CHAP. 213.]

SEC. 4. *Use of poisonous substances, etc., for taking of fish prohibited.*—It shall be unlawful for any person to take, in any permanent waters of this State, for any purpose, any trout or food fish at any time by the use of any poisonous or deleterious or stupefying drug * * *.²

[SESSION LAWS OF 1915, CHAP. 200.*]

SEC. 4. *Dumping of sawdust into trout streams, etc., prohibited.*—* * * And it shall be unlawful for any person to empty or allow to be emptied, place or allow to be placed, any sawdust, manure, or refuse matter of any kind into the waters of this State containing trout or food fish, or deposit the same within such distance that it may be carried into such waters by natural causes; * * *

SEC. 5. *Penalty.*—Any person violating any of the provisions of the four preceding sections shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment in the county jail not exceeding 30 days, or by both such fine and imprisonment.

[POLLUTION OF STREAMS, LAKES, AND OTHER BODIES OF WATER. RES. 174, RD. OF H., JULY 16, 1915.]

1. No sewage, drainage, domestic, factory, or industrial refuse, excremental, or other polluting matters of any kind whatsoever, which, either by itself or in connection with other matter, corrupts or impairs or tends to corrupt or impair, the water so as to render its use, or the use of ice formed therefrom, detrimental or dangerous to health, shall be placed in or discharged into any river, brook, stream, or tributary branch thereof, or of any lake, pond, or other public

¹ Sec. 38 of this act reads: "Secs. 238 and 245, both inclusive, * * * of the Revised Political Code of 1903 * * * are hereby repealed." This is taken to mean secs. 238 to 245, inclusive (as amended by chap. 217, Session Laws of 1903). All of these sections conflict with the new law.

² See footnote to chap. 200, Session Laws of 1915.

* At the present time there are in force two other laws covering what is given in sec. 4 of this law (1) sec. 3100 of Revised Political Code of 1903, as amended by chap. 112, Session Laws of 1905, and chap. 91, Session Laws of 1909, and (2) chap. 213, Session Laws of 1913 sec. 4. Sec. 3100, as amended, is therefore omitted, and only a part (which appeared in sec. 3100, as amended, but has been omitted from the 1915 law) is given in the case of the 1913 law. As this clause does not conflict with the 1915 law, it would appear to be in force. The penalty for the 1913 law is identical with that for the 1915 law and is therefore omitted.

stream or body of water, within or abounding the State of South Dakota, from which water or ice is, or may be, taken for domestic purposes.

2. No sewage, drainage, domestic, or industrial refuse, excremental, or other polluting matters of any kind whatsoever, which, either by itself or in connection with other matter, corrupts or pollutes, or tends to corrupt or pollute the water thereof, shall be placed in or discharged into any river, brook, stream, or of any tributary or branch thereof, or of any lake, pond, or other public stream or body of water within or bounding the State of South Dakota, so as to render same injurious or dangerous to the public health.

3. Complaint may be made to the State board of health of the violation of the provisions of the foregoing regulations. Whenever the county board of health of any county of the State or the health officer or board of any city or town of the State, or 10 per cent of the electors of any county, city, or town of the State, shall file with the State board of health a complaint in writing, setting forth that the waters of any river, brook, stream, or tributary or branch thereof, or of any lake, pond, or other public stream or body of water are corrupted, impaired, or polluted as prohibited in the foregoing sections, and specify the causes thereof, the State board of health, if it deems such complaint sufficient and warranted, will make an order appointing a hearing thereon, and the superintendent shall give such notice of said hearing by posting, publishing, or otherwise, as the board by its order shall prescribe. At such hearing any party interested may appear and be heard with reference thereto. The State board of health will thereupon make its findings, and with the approval of the attorney general make such regulations and directions as shall be required to prevent the corruption and pollution of said waters.

4. The State board of health will proceed of its own motion, when deemed necessary to protect the public health, to investigate alleged pollution of streams or public waters of the State, whether with or without a hearing, as the board deems best, and make, with the approval of the attorney general, such regulations as it deems necessary in any such case.

[DISPOSAL OF CREAMERY WASTE. REG. BD. OF H., JULY 25, 1913.]

117. Creamery waste or washings must not be discharged upon the surface of the ground or upon low places where it will remain during the process of decomposition or into a slough, pond, lake, or other body of stagnant or standing water.

[DISPOSAL OF BODIES OF DEAD ANIMALS. REG. BD. OF H., JULY 25, 1913.]

118. No carcass of any dead animal shall be left unburied in the State of South Dakota, nor shall it be thrown into any lake, stream, pond, well, or any other body of water.

119. Any such carcass shall be buried by the owner so that it will be covered by at least 3 feet of earth.

120. Burial shall be made within 24 hours after death, and in all cases of death from a communicable disease the body shall be thoroughly enveloped in quicklime.

121. At all municipal dumping grounds where carcasses are disposed of provision must be made for their immediate burial.

122. In lieu of the foregoing the dead bodies of animals may be burned.

TENNESSEE.

[CODE, 1917.]

2185a. *Cemeteries not to be located upon watersheds furnishing water supplies.*—It shall hereafter be unlawful for any cemetery, graveyard, or burying place for the dead to be located, or for any dead body to be buried, upon any stream or watercourse, or the watershed draining upon any stream or watercourse, from which is taken the water supply to be used by the inhabitants of any city or town having a population of 35,000 and upwards, according to the Federal census of 1880, or any subsequent Federal census; and where such cemetery, graveyard, or burying place for the dead, or the burying of such dead body, shall be within 10 miles of the corporate limits of said city or town, and in such a place that the surface, storm, or drainage water from that place will flow into or commingle with the waters of said stream or watercourse above the intake point in said stream or watercourse from which is drawn the water supply for the inhabitants of said city or town.

2185a-1. *Same subject.*—It shall be unlawful for any cemetery, graveyard, or burying place for the dead to be located, or for any dead body to be buried upon any tributary or watershed draining upon any tributary, to said stream or watercourse described in the first section of this act,¹ where such cemetery, graveyard, or burying place for the dead, or the burying of such dead body, shall be within 10 miles of the corporate limits of said city or town, and where such tributary stream flows into the main stream or watercourse at a point above the intake point in such main stream or watercourse from which is drawn the water supply for the inhabitants of said city or town.

2185a-2. *Intent of act.*—The intent of this act² is to save from contamination and preserve the purity of the water supply to be used by the inhabitants of said city or town; and nothing in this act shall be construed to forbid the location of burying places for the dead, or the burying of dead bodies, within a nearer distance than 10 miles from the corporate limits of said city or town: *Provided*, That such cemetery or burying place for the dead shall not be located, or such body buried, on a stream or a tributary, or a watershed of a tributary or stream, in such a place or locality as will or may contaminate the waters of said stream or watercourse above the intake point of supply in said stream or watercourse, as set forth in the first section of this act.

2185a-3. *Penalties.*—Any person convicted of any of the offenses, or of aiding or abetting the commission of any of the offenses mentioned in this act, shall upon conviction thereof pay a fine in an amount not to exceed \$250, and may be imprisoned in the county jail, at the discretion of the court, for a period of time not to exceed 90 days.

2498a-4. *Prohibiting injury to water supplies.*—It shall be a misdemeanor for any person * * * to willfully disturb, pollute, contaminate, or injure the water in the tanks, standpipes, or reservoirs of any such waterworks by bathing therein or by any other act or acts tending to injure the water, or to make it unpalatable, unwholesome, or unfit for domestic or manufacturing purposes, of any plant supplying water for domestic or manufacturing purposes, whether the same shall belong to a city or town government, or to a waterworks company, or to any person, firm, or corporation; and any person found guilty thereof, or anything prohibited hereby, shall pay a fine of not less than \$5 nor more than \$50, one-half of which shall go to the informer, and the other half to the public school fund.

2498a-5. *Prohibiting pollution water supplies.*—It shall be a misdemeanor for any person to willfully corrupt or to permit anything to run or fall into any

¹ Section 2185a above.² Sections 2185a-2185a-4.

stream from which water shall be taken for the purpose of supplying water to any water plant such as is referred to in section 1 of this act,¹ and any person violating this section shall be punished as provided in section 1 hereof.

2498a-6. *Inquisitorial powers of grand juries.*—The grand juries of this State shall have inquisitorial power of all offenses committed against this act and the same shall be given in charge to such juries by the judges of the several circuit courts of the State.

2957a-46. *Use of poison for taking fish prohibited.*—It shall be unlawful * * * for any person or persons within this State to capture, kill, or wound any fish in any of the streams, rivers, lakes, bayous, or ponds of this State by means of * * * poison, lime, fish berries * * *: *Provided*, That the taking of fishes from ponds or reservoirs wholly on private property * * * shall not be deemed to be within the inhibition of this section. Any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$25 nor more than \$100.

2957a-52. *Dumping sawdust wastage in streams.*—It shall be unlawful to dump the sawdust wastage from any mill, or other source, into the waters of any stream that is the known habitat of edible fishes. Any person violating this provision shall be guilty of a misdemeanor, and on conviction, shall be fined not less than \$25 nor more than \$50.

6496. *Misdemeanor to injure water or spring.*—It is declared to be a misdemeanor—

(4) To injure any spring, well, or water used by any worshipping assembly or belonging to another person.

6520. *Throwing dead body into any spring, etc.*—If any person place or throw the dead body of any animal in any spring, well, cistern, or running stream of water, he is guilty of a misdemeanor.

6751. *Polluting rivers, etc., a nuisance.*— * * * the corrupting or rendering unwholesome or impure the water of any river, stream, or pond are nuisances.²

6754. *Defouling water supplies.*—It shall be a high misdemeanor for any person or persons to prosecute or carry on any business, or to erect or construct any slaughterhouse, hide house, bone yard, tanyard, or soap factory, or to deposit any injurious matter, thing, or substance, or to do any other act or thing in such manner or at such a place as to injure or pollute the water of any stream from which water is taken by means of waterworks to supply any town or city in this State.

6755. *Penalties.*—Any person or persons violating the provisions of the above section shall, upon indictment and conviction, be fined at the discretion of the jury; and the court before whom the conviction is had shall order the abatement of such nuisance, and each day that any such nuisance is done or continued shall constitute an additional offense, and the person or persons so offending shall be liable to the water company, or other persons injured, for all damages resulting from such injury.

6771. *Putting dead body of person into stream.*—Any person who willfully and unnecessarily and in an improper manner indecently exposes, throws away, or abandons any human body, or the remains thereof, in any public place or in any river, stream, pond, or other place is guilty of a misdemeanor.

6869. *Polluting rivers, etc., a nuisance.*—It is a public nuisance—

(3) To corrupt or render unwholesome or impure the water of any river, stream, or pond to the injury or prejudice of others.³

¹ Section 2498a-4 above.

² See sec. 6869 below.

³ See sec. 6751 above.

TEXAS.

[PENAL CODE, 1911.]

605. *Pollution of water supplies.*—If any person shall in any wise pollute or obstruct any watercourse, lake, pond, marsh, or common sewer, or continue such obstruction or pollution, so as to render the same unwholesome or offensive to the inhabitants of the county, city, town, or neighborhood thereabout, he shall be fined in a sum not exceeding \$500.

907 (as amended by General Laws of 1913, chap. 135). *Catching of fish, green turtle or terrapin, etc., by means of poisons prohibited.*—The catching, taking, or killing of fish, green turtle, or terrapin in any of the salt waters or fresh waters, lakes, or streams in the State by poison, lime * * * is hereby prohibited; and any person offending against this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than \$25 nor more than \$200, and by confinement in the county jail not less than 30 nor more than 90 days.¹

1077. *Poisoning water supplies.*—If any person * * * shall willfully poison or cause to be poisoned any spring, well, cistern, or reservoir of water with such intent [to kill or injure any other person], he shall be punished by imprisonment in the penitentiary not less than 2 nor more than 10 years.

[GENERAL LAWS OF 1911, CHAP. 110.]

SECTION 1. *Unlawful to poison fish.*—It shall be unlawful for any person to take, catch, kill, or destroy any fish within the fresh-water streams, lakes, bayous, ponds, or pools in this State * * * by means of poisoning, liming, ditching, draining, muddying * * *.¹

SEC. 2. *Penalty.*—Any person who shall take, catch, kill, or destroy any fish within the fresh-water streams, lakes, bayous, ponds, or pools of this State * * * by poisoning or liming during any season of the year shall be deemed guilty of a misdemeanor and upon conviction he shall be fined in any sum not less than \$100 nor more than \$500, or by imprisonment in the county jail for a term of not less than 30 days and not more than 90 days, or by both such fine and imprisonment.²

[ACTS OF 1913, CHAP. 47, AS AMENDED BY ACTS OF 1915, CHAP. 23.]

SECTION 1. *Pollution of watercourses.*—It shall be unlawful for any person, firm, or corporation, private or municipal, to pollute any watercourse, or other public body of water, from which water is taken for the uses of farm, live stock, drinking, and domestic purposes, in the State of Texas, by the discharge, directly or indirectly, of any sewage or unclean water or unclean or polluting matter or thing therein, or in such proximity thereto as that it will probably reach and pollute the waters of such watercourse or other public body of water from which water is taken, for the uses of farm, live stock, drinking, and domestic purposes; *Provided, however,* That the provisions of this bill shall not affect any municipal corporation situated on tide water; that is to say, where the tide ebbs and flows in such watercourse. A violation of this provision shall be punished by a fine of not less than \$100 and not more than \$1,000.

¹ See chap. 110, General Laws of 1911, secs. 1 and 2.² See sec. 907 of the Penal Code, above.

When the offense shall have been committed by a firm, partnership, or association, each member thereof who has knowledge of the commission of such offense shall be held guilty. When committed by a private corporation, the officers and members of the board of directors having knowledge of the commission of such offense shall each be deemed guilty; and when by a municipal corporation, the mayor and each member of the board of aldermen or commission having knowledge of the commission of such offense, as the case may be, shall be held guilty as representatives of the municipality; and each person so indicted as above shall be subject to the punishment provided hereinbefore: *Provided, however,* That the payment of the fine by one of the persons so named shall be a satisfaction of the penalty as against his associates for the offenses for which he may have been convicted: *Provided,* The provisions of this act shall not apply to any place or premises located without the limits of an incorporated town or city, nor to manufacturing plants whose effluents [sic] contain no organic matter that will putrify, or any poisonous compounds, or any bacteria dangerous to public health or destructive of the fish life of streams or other public bodies of water.

SEC. 2. *Writ of injunction to follow conviction.*—Upon the conviction of any person under section 1 of this act it shall be the duty of the court, or judge of the court, in which such conviction is had to issue a writ of injunction, enjoining and restraining the person or persons or corporation responsible for such pollution from a further continuance of such pollution; and for a violation of such injunction the said court and the judge thereof shall have the power of fine and imprisonment, as for contempt of court, within the limits prescribed by law in other cases: *Provided,* That this remedy by injunction and punishment for violation thereof shall be cumulative of the penalty fixed by section 1 of this act; and the assessment of a fine for contempt shall be no bar to a prosecution under section 1; neither shall a conviction and payment of fine under section 1 be a bar to contempt proceedings under this section.

SEC. 3. *Cities, sewage from which pollute watercourses, given three years to alter plants.*—Any city or town of this State with a population of more than 50,000 inhabitants which has already an established sewerage system dependent upon any watercourse or other public body of water from which water is taken for the uses of farm, live stock, drinking, and domestic purposes, or which discharges into any watercourse or public body of water from which water is taken for the uses of farm, live stock, drinking, and domestic purposes, shall have until Jan. 1, 1917, within which to make other provisions for such sewage. Cities and towns of less population than 50,000 inhabitants shall have until Jan. 1, 1917, within which to make other arrangements for the disposal of such sewage. Any person, firm, or corporation, private or municipal, coming under or affected by the terms of this bill, or any independent contractor having the disposal of the sewage of any city or town, shall have until Jan. 1, 1917, within which to make other arrangements for the disposal of such sewage, or other matter which may pollute the water, as defined in this bill.

SEC. 4. *State board of health to enforce this act.*—The Texas State Board of Health is authorized, and it is hereby made its duty, to enforce the provisions of this act; and to this end the governor shall appoint, by and with the consent of the senate, an inspector, to act under the direction of the said board of health and the State health officer, making such investigations, inspections, and reports, and performing such other duties in respect to the enforcement of this act as the said board of health officer may require.

UTAH.

[COMPILED LAWS, 1907.]

65. *Dead animals not to be deposited near spring or stream.*—No such animal [dead domestic animal] shall be left unburied within * * * 20 rods from any spring, running stream, or water ditch. * * *

66. *Penalty.*—Any person refusing or neglecting to comply with any of the requirements of this chapter [secs. 64-67] shall, upon conviction thereof before any justice of the peace having jurisdiction, be fined in any sum not exceeding \$10, the expense of removing or burying said animal, and costs of suit.

67. *Owner liable for expense.*—If the owner or the person in charge of any such animal at the time of its death shall fail to remove or bury the same as in this chapter provided, any citizen may bury or remove such animal and collect pay therefor from the owner, if known, or from the county when the owner is unknown. * * *

200x15 (as amended by chap. 100, Laws of 1915). *City council to protect water supply from pollution.*—[The city council shall have power] to construct or authorize the construction of waterworks without their limits; and for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works; and over all reservoirs, streams, canals, ditches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same, and over the stream or source from which the water is taken, for 10 miles above the point from which it is taken; and to enact all ordinances and regulation [sic] necessary to carry the power herein conferred into effect: *Provided,* however, That each city of the first class shall provide a highway in and through its corporate limits and so far as its jurisdiction extends, which shall not be closed to cattle, horses, sheep, or hogs, which are being driven through any such city or through any territory adjacent thereto, over which the said city has jurisdiction, but the city council of such city may enact ordinances placing under police regulations the manner of driving such cattle, sheep, horses, and hogs through such city or any territory adjacent thereto over which the said city has jurisdiction.

200x17 (as amended by chap. 100, Laws of 1915). *Council to control water-courses.*—[The city council shall have power] to control the water and water-courses leading to the city, and to regulate and control the watercourses and mill privileges within the city: *Provided,* That the control shall not be exercised to the injury of any rights already acquired by actual owners * * *.

302x13 (as amended by chap. 119, Laws of 1917). *Town trustees to protect water supply from pollution.*—[The board of trustees in each town shall have power] to lay out, construct, open, and keep in repair canals, water ditches, or water pipes to conduct water for artificial light and power purposes * * * for the purpose of protecting the water that is used for culinary and domestic uses from pollution, their jurisdiction shall extend over the stream or source from which the water is taken for 10 miles above the point from which it is taken from the natural stream * * *.

1098. *Rules and regulations to be made by State board of health.*—The board [State board of health] * * * shall have authority to make such rules and regulations not contrary to law as may be deemed necessary for the preservation of public health. * * *

1113x. *Nuisance defined.*—Whatever is dangerous to human life and what-even renders * * * water * * * impure or unwholesome are declared to be nuisances and to be illegal, and every person, either owner, agent, or

occupant, having aided in creating or contributing to the same, or who may support, continue, or retain any of them shall be deemed guilty of a misdemeanor.

1113x1. *Throwing offal into watercourse forbidden.*—No house refuse, offal, garbage, dead animals, decaying vegetable matter, or organic waste substance of any kind shall be thrown or allowed to remain * * * in any * * * watercourse, lake, pond, spring, or well.

1113x3. *Privies not to be located near springs, etc.*—No privy vault, cesspool, or reservoir into which a privy, water closet, stable, or sink is drained shall be established or permitted within 50 feet of any surface well, spring, or other source of water used for drinking or culinary purposes, without written permission from the board of health, based upon the advice of the medical health officer, * * *

1113x4. *Piggens not to be maintained within 100 feet of well or spring.*—No piggens shall be built or maintained within 100 feet of any well or spring of water used for drinking purposes * * *.

1113x5. *Hog yards and piggeries not to be permitted within 100 feet of stream used for culinary purposes.*—Hog yards and piggeries will not be permitted within 100 feet of any natural stream, or watercourse used for culinary purposes, and the drainage of a piggery shall in no case be permitted to reach any natural stream until said drainage has been purified.

1288x5 (as amended by chap. 103, Laws of 1911). *Rights to unappropriated water.*—Rights to the use of the unappropriated water in the State may be acquired by appropriation, in the manner hereinafter provided, and not otherwise. The appropriation must be for some useful or beneficial purpose, and, as between appropriators, the one first in time shall be first in right * * *.¹

3058. *When injunction may be granted.*—An injunction may be granted in the following cases:

1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

2. When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the plaintiff.²

3500. *Definition of nuisance.*—Anything which is injurious to health * * * is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.³

4005. *Penalty for misdemeanor when not prescribed.*—Except in cases where a different punishment is prescribed by law, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine in any sum less than \$300, or by both. In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable as for a misdemeanor, and there is no other punish-

¹ This section is given because it is cited in *Cole v. Richards Irr. Co.*, 27 U. 205; 75 P. 376, and in *Crane v. Winsor*, 2 U. 248, in which it is held that a person is liable for any interference with appropriated water that impairs the quality thereof. It seems unnecessary to quote further from the law.

² Injunction may be granted to prevent the pollution of waters used for irrigation and domestic purposes. *Crane v. Winsor*, 2 U. 248. *North Point C. I. Co. v. Utah & S. L. C. Co.*, 16 U. 246, 52 P. 168.

³ The mixing of impure water with water used for irrigation and domestic purposes, which renders it unfit for such use, causes a nuisance. *North Point C. I. Co. v. Utah & Salt Lake C. Co.*, 16 U. 246; 52 P. 168.

ment prescribed by law, such corporation is punishable by a fine not exceeding \$1,000.

4268. *Penalty for poisoning water supplies.*—* * * every person who willfully poisons any spring, well, stream, or reservoir of water is punishable by imprisonment in the State prison for a term not less than one nor more than 10 years.

4274. *Defouling water.*—Any person who shall, either:

1. Construct or maintain any corral, sheep pen, stable, pigpen, chicken coop, or other offensive yard or outhouse, where the waste or drainage therefrom shall flow directly into the waters of any stream, well, or spring of water used for domestic purposes; or,

2. Deposit, pile, unload, or leave any manure heap, offensive rubbish, or the carcasses of any dead animal, where the waste or drainage therefrom will flow directly into the waters of any stream, well, or spring of water used for domestic purposes; or,

3. Dip or wash sheep in any stream, or construct, maintain, or use any pool or dipping vat for dipping or washing sheep in such close proximity to any stream used by the inhabitants of any city, town, or village for domestic purposes, as to make the waters thereof impure or unwholesome; or,

4. Construct or maintain any corral, yard, or vat, to be used for the purpose of shearing or dipping sheep within 12 miles of any city, town, or village where the refuse or filth from the said corral or yard would naturally find its way into any streams of water used by the inhabitants of any city, village, or town for domestic purposes; or,

5. Establish and maintain any corral, camp, or bedding place for the purpose of herding, holding, or keeping any cattle, horses, sheep, or hogs within 7 miles of any city, town, or village, where the refuse or filth from said corral, camp, or bedding place will naturally find its way into any stream of water used by the inhabitants of any city, town, or village, for domestic purposes—shall be guilty of a misdemeanor.

4275. *Public nuisance defined.*—A public nuisance is a crime against the order and economy of the State, and consists in unlawfully doing any act, or omitting to perform any duty, which act or omission either—

1. Annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons; or

3. Unlawfully interferes with * * * any lake, stream, canal, basin * * *.¹

4279. *Dead animals not to be placed in streams.*—Every person who puts the carcasses of any dead animal, or the offal from any slaughter pen, corral, or butcher shop into any river, creek, pond * * * is guilty of a misdemeanor.

[LAWS, 1917, CHAP. 79.]

SEC. 9. *Pollution of streams by sawdust.*—* * * It shall be a misdemeanor for any person, corporation, or company owning any mill, factory, or reduction works in this State to cause or permit any refuse matter from said mills, factory, or reduction works to be washed, dumped, or placed in any of the streams or waters of this State, or to place such refuse matter from said mill, factory, or reduction works in such close proximity to any of the streams that the same might be washed into said streams by rain. Any person or persons

¹ The defouling of waters of a canal, from which a number of persons obtained water for irrigation, domestic, and other purposes, so that it is unfit for use, creates a public nuisance, and the right to maintain it can not be gained by prescription. *North Point C. I. Co. v. Utah & L. C. Co.*, 16 U. 246; 52 P. 168. *Crane v. Winsor*, 2 U. 246.

violating the provisions of this section shall be guilty of a misdemeanor and fined not less than \$100 for such violation, and each day during which such violation continues shall constitute a separate offense.

SEC. 20. *Poison to be seized.*—All * * * lime, poison, drugs * * * for the unlawful taking of fish or game of any kind found in the possession of any person who may be detected in unlawfully taking fish from any of the waters of the State * * * shall be seized by the officer making the arrest, and if it appears from evidence before the magistrate trying the case that the * * * lime, poison, drugs * * * were used for the unlawful taking of fish or game, the same shall be confiscated and sold at public auction by the State commissioner and the proceeds therefrom turned into the fish and game fund.

[CAMPS.—SANITARY REGULATIONS. REG. BD. OF H., SEPT. 8, 1915.]

REGULATION 1. *Pollution of waters prohibited.*—All persons living in the open or in camps, tents, or other temporary shelters shall exercise every proper and reasonable precaution to dispose of their wastes, so that springs, lakes, reservoirs, streams, and other watercourses shall not be polluted.

REG. 2. *Notice of labor or construction camp to be occupied by five or more persons to be given State board of health.*—Every railroad or other corporation, contractor, lumberman, or other person in Utah who shall establish, construct, or maintain any labor or construction camp to be occupied by five or more persons, and the person in charge of any temporary living quarters on wheels or otherwise that shall be provided for five or more workmen, shall at once notify the State board of health by telephone, telegraph, or letter, of the presence and location of such quarters or camp.

REG. 9. *No building, tent, or car in any camp to be nearer than 50 feet of water's edge of public water supply.*—In every camp or temporary quarters the nearest part of any building, tent, car, or shed shall be at least 50 feet in a horizontal direction from the water's edge of any stream, lake, or reservoir.

REG. 10. *Suitable privy or other toilet facilities to be provided and used.*—For every camp there shall be provided convenient and suitable privy or other toilet facilities approved by the State board of health, which the occupants of the camp shall be required to use instead of polluting the ground.

REG. 11. *Construction of privies more than 200 feet from the water's edge.*—If such privy be more than 200 feet from the water's edge of any spring, stream, lake, or reservoir forming part of a public or private water supply, it shall consist of a pit at least 2 feet deep, with suitable shelter over the same. No such pit shall be filled with excreta to nearer than 1 foot from the surface of the ground, and the excreta in the pit shall always be covered with earth or ashes. If the camp is to be occupied for more than six days between May 1 and November 1, the shelter and pit shall be inclosed in fly netting.

REG. 12. *Construction and care of privies located between 50 and 200 feet from the water's edge.*—If such privy be between 50 and 200 feet from the waters of a spring, stream, lake, or reservoir forming part of a public or private water supply, there shall be no pit, but the excreta shall be received in a water-tight tub or bucket and periodically, as often as may be found necessary, shall be taken away and disposed of. Such privy shall be properly screened against flies and kept in a clean and sanitary condition; the pails or buckets shall not be allowed to fill so that they overflow or spill in carrying, and the construction of the privy shall be such that the convenient removal and replacement of the tubs or buckets is facilitated.

REG. 13. *Disposal of wastes from privies.*—The pails, tubs, or buckets used in privies located between 50 and 200 feet from the water's edge, as referred to in regulation 12, shall, when not more than three-quarters filled, be removed from the privy and carried at least 200 feet from the water's edge and the contents there either burned or buried in a trench at least 2 feet deep, so that when buried there shall be at least 1 foot of earth cover. The pails, tubs, or buckets immediately after being emptied shall be rinsed out with a suitable disinfectant as particularly prescribed for such purposes by the special rules and regulations of the State board of health, and the rinsing fluid shall also be emptied into the trench.

REG. 14. *Garbage to be disposed of in suitable manner.*—All garbage, kitchen wastes, and other rubbish in camps shall be deposited in suitable covered receptacles, which shall be emptied daily or oftener if necessary and the contents burned, buried, or otherwise disposed of in such a way as not to be or become offensive or insanitary.

REG. 15. *Water rules to be observed.*—Whenever a camp is established on the banks of a spring, lake, reservoir, stream, or other watercourse which is a source of water supply, no bathing or washing by the occupants of said camp shall be allowed in said springs, lakes, reservoirs, streams, or other watercourses.

REG. 16. *Location and drainage of stables regulated.*—No stable or other shelter for animals shall be maintained within 100 feet of any living quarters in a camp nor within 150 feet of any kitchen or messroom therein. No drainage from such stable or shelter shall be permitted to empty directly into any spring, lake, reservoir, stream, or other watercourse forming a part of a public or private water supply.

VERMONT.

[PUBLIC STATUTES, 1906.]

5419. *Promulgation and enforcement of rules and regulations by State board of health.*—Said board [State board of health] may promulgate and enforce rules and regulations relative to the preservation of the public health in contagious and epidemic diseases and the causes, development, spread, and prevention of disease. * * *

5420. *Failure to comply with regulations of board; penalty.*—A person who fails to comply with a rule or regulation of said board, after being notified in writing by the secretary of the State or local board of health, shall be fined not more than \$100 nor less than \$10, with costs of prosecution.

5402. *Penalty for polluting streams with dead animals.*—A person who puts or causes to be put a dead animal or animal substance into or upon the bank of a lake, pond, running stream, or spring of water so that it is drawn or washed into the same and suffers it to remain therein for a period of 48 hours shall be fined not more than \$50 nor less than \$5, with costs of prosecution.

5405. *Supervision of sources of water and ice supply.*—The State board of health shall have the general oversight and care of waters, streams, and ponds used by a town, village, public institution, or a water or ice company as a source of water or ice supply, and of springs, streams, and watercourses tributary thereto. Said board shall, upon request, be provided with maps, plans, and documents suitable for such purposes by and at the expense of such town, village, public institution, or water or ice company, and said board shall keep records of its transactions relative thereto.

5496. *Use of water and ice prohibited; powers of court of chancery.*—Said board may prohibit the use of water or ice from any source, when, in its opinion, the same is so contaminated, unwholesome, or impure that the use thereof endangers the public health. The court of chancery may upon application therefor by said board, enforce any order, rule, or regulation which said board may make under and by virtue of this section.

5497. *Examination of waters; rules and regulations.*—Said board may cause examinations of such waters to be made to ascertain their purity and fitness for domestic use, or their liability to impair the interests of the public or of persons lawfully using them, or to imperil the public health. Said board may make rules and regulations to prevent the pollution and to secure the sanitary protection of such waters.

5498. *Publication of orders, rules, etc.*—The publication of an order, rule, or regulation made by said board under the provisions of this chapter, in a newspaper published in the town or village in which such order, rule, or regulation is to take effect, or, if no newspaper is published in such town or village, the posting of a copy of such order, rule, or regulation in three public places in such town or village shall be legal notice to all persons; and an affidavit of such publication or posting by the person causing such notice to be published or posted, filed, and recorded with a copy of the notice in the office of the clerk of such town or village shall be admitted as evidence of the time and place and the manner in which the notice was given.

5499. *Report; recommendations; violations; expert assistants.*—Said board shall include in its biennial report its doings for the preceding biennial term, and shall recommend measures for the prevention of the pollution of such waters and for the removal of polluting substances, in order to protect the public health and develop and protect the rights of the State in such waters, and shall recommend any legislation or plans for systems of main sewers necessary for the preservation of the public health and for the purification and prevention of pollution of ponds, streams, and waters. Said board shall notify the State's attorney of the county wherein any violation of a provision of this chapter occurs; and said board may, when necessary, employ expert assistants.

5500. *Advice as to proposed water or sewer systems; "drainage" and "sewage" defined.*—Towns, villages, or persons shall submit to said board for its advice their proposed systems of public water supply or for the disposal of drainage or sewage. Said board shall consult with and advise municipal authorities or persons having or about to have systems of public water supply, drainage, or sewage as to the most appropriate sources of water supply, and as to the best methods of assuring its purity and of disposing of their drainage or sewage, with reference to the existing and future needs of other towns which may be affected thereby. Said board shall consult with and advise persons engaged or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute water or a source of water or ice supply as to the best method of preventing such pollution, and it may conduct experiments to determine the best method of purification or disposal of drainage or sewage. A person shall not be required to pay the expense of such consultation, advice, or experiments. The word "drainage," as used in this section, shall mean rainfall, surface and subsoil water, and "sewage," domestic and manufacturing filth and refuse.

5501. *Complaints; hearings; orders.*—Upon petition to said board by the mayor of a city, the selectmen of a town, the trustees of a village, the managing board or officer of a public institution, or by a board of water commissioners, or the president of a water or ice company, stating that manure, excrement,

garbage or other matter is polluting or tending to pollute the water of a stream, pond, spring, or water course used by such city, town, village, institution, or company as a source of water or ice supply, said board shall appoint a time and place for hearing within the county where the nuisance or pollution is alleged to exist, and, after notice thereof to parties interested and a hearing, if, in its judgment, the public health so requires, shall, by an order served upon the party or company causing or permitting such pollution, prohibit the deposit, keeping or discharge of such cause of pollution, and shall order him to desist therefrom and to remove such cause of pollution.

5502. *Cultivation of soil; use of structures.*—Said board shall not prohibit the cultivation or use of soil in the ordinary methods of agriculture if no human excrement is used therefor. Said board shall not, upon complaint made by the board of water commissioners of a city, town, village, or by a water or ice company, prohibit the use of a structure which was in existence prior to December 12, 1902, unless such board of water commissioners or company files with the State board of health a vote of its city council, selectmen, trustees, or company, respectively, that such city, town, village, or company will, at its own expense, make such change in such structure or its location as said board shall deem expedient. Such vote shall be binding on such city, town, village, or company.

5503. *Damages; appeals.*—Damages caused by such change shall be paid by such city, town, village, or company; and, if the parties can not agree thereon, such city, town, village, or company shall tender to the parties sustaining damages such a sum of money as, in their judgment, is a reasonable compensation for the damages sustained. A person aggrieved by an order under the provisions of this or the two preceding sections, or with the sum so tendered as damages, may appeal therefrom in the manner provided in sections 3835 to 3839,¹ inclusive. But the notice provided for therein shall be served on the petitioners in fact under the second preceding section and also upon the State board of health. If the appeal be only from the compensation for damages the order of said board shall be complied with during the pendency of such appeal, unless otherwise authorized by said board.

5504. *Powers of court of chancery.*—The court of chancery shall have jurisdiction and power, upon application thereto by the State board of health or a party interested, to enforce its orders or the orders, rules, and regulations of said board, and to restrain the use or occupation of the premises or such portion thereof as said board may specify, on which such material is deposited or kept or such other cause of pollution exists, until the orders, rules, and regulations of said board are complied with.

5505. *Entrance into buildings, structures, etc., by board.*—Said board or an agent thereof may enter any building, structure, or premises for the purpose of ascertaining whether sources of pollution or danger to the water supply exist therein, and whether the rules, regulations, and orders of said board are obeyed.

5506. *Violation of rules, regulations, and orders.*—A person who violates a rule, regulation, or order made under the provisions of this chapter shall be imprisoned not more than one year or fined not more than \$500, or both.

5507. *Deposit of polluting matter prohibited.*—No sewage, drainage, refuse, or polluting matter of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of a pond or stream used as a source of ice or water supply by a town, village, public institution, water or ice company, or person for domestic use, or render it injurious to health, shall be discharged into any such stream or pond or upon their banks.

¹ Not given in this compilation.

5509. *Name; penalty; proceedings.*—A person who willfully deposits excrement or foul or decaying matter in water which is used for the purpose of domestic water or ice supply, or on the shores thereof within 5 rods of the water, shall be imprisoned not more than 30 days or fined not more than \$50. A constable or police officer of a town or village in which such water is wholly or partially situated, acting within the limits of his town or village, an executive officer or agent of a water board, board of water commissioners, public institution, or water or ice company furnishing water or ice for domestic purposes, acting upon the premises of said board, institution, or company and not more than 5 rods from the water, may, without a warrant, arrest a person found in the act of violating a provision of this section and detain him until complaint may be made against him therefor. The provisions of this section shall not apply to the sewage of a town, village, or public institution, or prevent the enrichment of land for agriculture by the owner or occupant thereof.

5701. *Poisoning wells, etc.; penalty.*—A person who * * * willfully poisons a spring, well, or reservoir of water, with a like intent [that of killing or injuring another person], shall be imprisoned in the State prison not more than 20 years.

[No. 171, Acts of 1908.]

SECTION 1. *Pollution of certain waters prohibited.*—No person shall discharge sewerage [sic] or other polluted matter into the waters of any pond or lake having an area of 1,000 acres or more lying wholly within the State. A person who violates a provision of this act shall be fined not more than \$200 nor less than \$20. Justices shall have concurrent jurisdiction with the county court of offenses under this act.

[No. 211, Acts of 1908 (as amended by No. 206, Acts of 1912).]

SECTION 1. *Sawdust not to be deposited in Lamoille River, etc.*—An owner or operator of a mill, who, by himself or agents, deposits or suffers to be deposited any sawdust, shavings, or mill refuse in the waters of the Lamoille River or in its tributaries above Ithiel Falls in the town of Johnson, shall be fined not less than \$20 nor more than \$100 for each offense.

[No. 222, Acts of 1912.]

SEC. 37. *Placing poisons in water prohibited.*—No person shall place in any of the waters of this State, lime, creosote, cocculus indicus, or other drug or poison destructive to fish.

SEC. 40. *Penalty.*—A person who violates a provision of this part [Part IV of the act, entitled "Fish"] is guilty of a misdemeanor and shall be fined as follows: For each violation * * * of section 37, not more than \$20 nor less than \$10 * * *.

[No. 232, Acts of 1912.]

SECTION 1. *Edgings and slabs from mills not to be deposited in streams.*—The owner or operator of a mill who by himself or his agents deposits or suffers to be deposited any edgings or slabs in the waters of any stream in the State shall be fined not more than \$100 nor less than \$20 for each offense.

SEC. 2. *Power mills hereafter to be erected not to deposit sawdust, etc., in streams.*—The owner or operator of a water, steam, gasoline or electrical power

mill which shall hereafter be erected, constructed, or set up, who by himself or his agents deposits or suffers to be deposited any sawdust, shavings, bark, edgings, or mill refuse in the waters of any stream in the State shall be fined not more than \$100 nor less than \$20 for each offense.

SEC. 3. *Does not remove right to recovery of damages.*—This act shall not, by implication or otherwise, take away or repeal any rights or remedies or any existing law, giving a person the right of recovery for or the protection against damages to his property or property rights by reason of sawdust, shavings, or other refuse being put into or negligently allowed to run into any stream of water, by another.

[No. 267, Acts of 1912.]

SECTION 1. *Sawdust, etc., not to be deposited in waters of Peter Brook.*—A person who by himself or his agents knowingly deposits or causes to be deposited any sawdust, shavings, or mill refuse in the waters of Peter Brook, so-called, leading from the mountain in the town of Glastenbury to the Hattenkill River, shall be fined not more than \$100 nor less than \$25, for each offense.

[No. 268, Acts of 1912.]

SECTION 1. *Sewage not to be discharged in Ryder Brook.*—No person shall deposit, or cause to be deposited, any sewage in Ryder Brook, so-called, in the town of Morristown or in any of the tributaries of said brook above the dam authorized by vote of the village of Morristown, September 17, 1912, and now being constructed near the mouth of said brook.

SEC. 2. *Penalty.*—A person who violates a provision of this act shall be fined not more than \$50 or be imprisoned not more than three months, or both, for each offense.

[No. 269, Acts of 1912.]

SECTION 1. *Sawdust not to be deposited in brook leading to Sabin Pond.*—A person who, by himself, or agent, knowingly deposits or suffers to be deposited, any sawdust, shavings, or mill refuse, in the brook leading from Valley Lake to Sabin Pond, shall be fined not more than \$100 nor less than \$25 for each offense.

[No. 270, Acts of 1912.]

SECTION 1. *Sawdust not to be deposited in Williams River.*—A person who, by himself, servant, or agent, deposits sawdust, shavings, or mill refuse in the waters of the Williams River or the tributaries thereof shall be fined not more than \$100 nor less than \$25 for each offense.

[No. 238, Acts of 1915.]

SECTION 1. *Sewage not to be discharged into Lake Eden.*—No person shall deposit, or cause to be deposited any sewage in Lake Eden, so-called, in the town of Eden, or in any of the tributaries of said lake.

SEC. 2. *Penalty.*—A person who violates a provision of this act shall be fined not more than \$50 or be imprisoned not more than three months, or both, for each offense.

¹ This act amends No. 180 of the Acts of 1899. Omitted from Public Statutes.

VIRGINIA.

[CODE, 1904; SUPPLEMENT, 1910; SUPPLEMENT, 1916.]

1038. *City councils to prevent pollution of water supplies.*—* * * The council of every city and town shall have power * * * to prevent the pollution of the water and injuries to waterworks, for which purpose their jurisdiction shall extend to 5 miles above the same * * *. (Supplement, 1910.)

2002. *Burial of dead from vessels.*—When any person dies on board of any vessel in this State, the master thereof shall cause the body to be buried above high-water mark, and at least 4 feet deep. If he fail to do so, he shall forfeit \$150. (Code, 1904.)

2087b. *Poisoning of fish prohibited.*—It shall not be lawful to use fish berries, lime, * * * for the destruction of fish in any of the waters in this State. Any person violating this act shall on conviction thereof be fined \$30 for each offense, one-half to be paid to the informer, and shall be imprisoned in jail until the fine is paid, but not exceeding 30 days. (Code, 1904.)

2108. *Poisoning fish and depositing noxious substances in watercourses prohibited.* 1. It shall be unlawful—

Fourth. To use fish berries, lime * * * for the destruction of fish, or knowingly or willfully to cast any noxious substance or matter into any watercourse of this State above tidewater, by which fish therein may be destroyed, or to place or to allow to pass into the waters of the James or Appomattox Rivers, or any of their tributaries, any lime, gas tar, or refuse of gas works, injurious to fish. (Supplement, 1916.)¹

2109. *Penalty for violating preceding section.*—Any person violating any of the provisions of the preceding section shall on conviction thereof be fined for each offense \$20 and be imprisoned in jail until the fine is paid, but not exceeding 30 days and forfeit all boats, * * * or other contrivances employed by him in such violation * * *. (Code, 1904.)

3818. *Casting dead animals, bait, etc., into watercourses above tidewater; how punished.*—If any person knowingly or willfully cast any dead animal, or any other noxious substance or matter, or what is commonly known as bait, into any watercourse of the State, above tidewater, by which the health of any person along said watercourse is affected, or the water is rendered impure or offensive, he shall be fined not less than \$10 nor more than \$50. (Code, 1904.)

3813a. *To prevent the pollution of potable water used for the supply of cities and towns.*—It shall be unlawful, except as hereinafter provided, for any person to defile or render impure, turbid or offensive the water used for the supply of any city or town of this State, or the sources or streams used for furnishing such supply, or to endanger the purity thereof by the following means, or any of them, to wit: By washing or bathing therein, or by casting into any spring, well, pond, lake or reservoir from which such supply is drawn, or into any stream so used, or the tributary thereof, above the point where such supply is taken out of such stream, or is impounded for the purposes of such supply, or into any canal, aqueduct, or other channel or receptacle for water connected with any works for furnishing a public water supply, any offal, dead fish, or carcass of any animal, or any human or animal filth or other foul or waste

¹ Volume from which law is taken is indicated at the end of each section.

² This subsection appeared in this form in the Code of 1904, and for that reason 2087b of the Code has been included in this compilation.

animal matter, or any waste vegetable or mineral substance, or the refuse of any mine, manufactory, or manufacturing process, or by discharging or permitting to flow into any such source, spring, well, reservoir, pond, stream, or the tributary thereof, canal, aqueduct, or other receptacle for water, the contents of any sewer, privy, stable, or barnyard, or the impure drainage of any mine, any crude or refined petroleum, chemicals, or any foul, noxious, or offensive drainage whatsoever, or by constructing or maintaining any privy vault or cesspool, or by storing manure or other soluble fertilizer of an offensive character, or by disposing of the carcass of any animal, or any foul, noxious or putrescible substance, whether solid or fluid, and whether the same be buried or not, within 200 feet of any watercourse, canal, pond, or lake aforesaid, which is liable to contamination by the washing thereof or percolation therefrom: *Provided*, That nothing in this act contained shall be construed to authorize the pollution of any of the waters in this State in any manner now contrary to law: *And provided further*, That this act shall not apply to streams the drainage area of which above the point where the water thereof is withdrawn for the supply of any city or town or is impounded for the purposes of such supply shall exceed 50 square miles. That any person knowingly or willfully violating the terms of this act shall be deemed guilty of a misdemeanor, and shall be punished for each offense by a fine not exceeding \$100, or by imprisonment not exceeding 30 days, or by both, at the discretion of the court: *And provided further*, That nothing herein contained shall be so construed as to prevent the washing of ore or minerals in any of the streams or waters of this Commonwealth other than such as may be used for the water supply of any city or town. (Code, 1904.)

3813b. *To prevent the pollution of drinking water.*—Any person or persons who shall knowingly and willfully throw or cause to be thrown into any reservoir or other receptacle of drinking water, or spring or stream of running water ordinarily used for the supply of drinking water or domestic purposes of any person or family, town or city in this Commonwealth, the dead body of any animal, or shall drown and leave, or cause to be drowned and left, any animal therein, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding \$100, or imprisoned not exceeding six months, or both, at the discretion of the court in which such conviction is made. (Code, 1904.)

3902. *Misdemeanors for which no penalty is provided.*—A misdemeanor for which no punishment is prescribed by statute shall be punished by fine or confinement in jail, or both, in the discretion of the jury, or of the court trying the case without a jury.

[ACTS OF 1910,¹ CHAP. 179.]

SEC. 1. *State board of health to promulgate and enforce rules and regulations.*—The State board of health shall have the power to make, adopt, promulgate, and enforce reasonable rules and regulations from time to time * * * to regulate the method of disposition of garbage or sewage and any other refuse matter in or near any incorporated town, city, or unincorporated town or village of this State * * *.

SEC. 2. *Penalty for violation of rules and regulations.*—Any person who shall violate, disobey, refuse, omit, or neglect to comply with any rule of said State board of health, made by it in pursuance of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished in the manner provided by law. * * *

¹ In the Supplements of 1910 and 1916, sections not amendatory to the Code of 1904 are not given serial numbers, but remain under the separate acts.

[ACTS OF 1916, CHAP. 46.]

SECTION 1. *Polluted areas of shellfish grounds to be marked, etc.*—For the purpose of protecting the shellfish industry of the State and preventing the sale of polluted, deleterious, or contaminated shellfish, the dairy and food commissioner is hereby directed to cause to be made, from time to time, examinations or analyses of the oyster and clam grounds located in the State and the shellfish intended for food purposes found thereon; and the said commissioner shall also cause examinations to be made of the waters flowing on and over said grounds; and when the said commissioner is satisfied, as a result of such examination or analysis or the surroundings, that such beds or waters or shellfish are polluted or contaminated, he shall, in collaboration with the commissioner of fisheries of the State, cause the limits or boundaries of such polluted or contaminated areas to be properly marked to indicate that the designated area is polluted or contaminated.

SEC. 2. *Unlawful to take oysters from polluted areas.*—When such polluted area or areas or waters have been determined and marked as hereinbefore provided, it shall be unlawful for any person or persons, firm, or corporation to take shellfish from such waters or areas for any purpose whatsoever except as hereinafter provided.

SEC. 3. *Removal from private polluted waters to unpolluted waters.*—When shellfish are found to be located on polluted areas or in contaminated waters on beds belonging to private parties under lease or deed, and it is desired to remove said shellfish so located to areas and waters free from pollution or contamination, the said shellfish may be removed for the aforesaid purpose only, provided the person or persons desiring to remove such shellfish shall first secure a permit for such removal from the commissioner of fisheries; and the said commissioner of fisheries is hereby authorized to grant, in his discretion, and under such rules and regulations as may be prescribed by him, permits for the removal of shellfish to unpolluted areas or uncontaminated waters: *Provided further*, That when shellfish shall have been so removed by permit, as hereinbefore provided, from privately owned polluted areas to areas free from pollution, it shall be unlawful to remove such shellfish again, unless they have remained on the unpolluted area at least seven days.

SEC. 3-a. *Removal from public polluted waters to unpolluted waters.*—When shellfish are found to be located on polluted areas or in contaminated waters, on beds belonging to the State (public grounds), the said shellfish may be removed by persons holding licenses to take oysters with ordinary tongs only from the said public ground, but only during the period from May 1 to August 15 of each year, and only for the purpose of transferring the said shellfish to areas and waters free from pollution or contamination: *Provided further*, That when shellfish shall have been so removed from polluted areas to areas free from pollution, it shall be unlawful to remove such shellfish again, unless they have remained on the unpolluted areas at least seven days.

SEC. 3-b. *Having polluted oysters in possession.*—It shall be deemed to be and shall be a violation of the provisions of this act for any person or persons to have in their possession, to store, to sell, or offer for sale shellfish which have been unlawfully removed from polluted or contaminated beds or waters contrary to the provisions of this act.

SEC. 4. *Oyster inspectors.*—For the purpose of carrying out the provisions of this act, the dairy and food commissioner and the commissioner of fisheries, and such agents or assistants of either of the said commissioners as are now or may hereafter be duly appointed, may enter on any premises located in the State, or on any boat, vessel, or barge or other conveyances, car,

wharf, shucking or packing house, or store, or stall, and if it appears that the provisions of this act have been violated, may, with or without a warrant, arrest any person or persons who have been or who are believed to have been in charge of such shellfish, or who may have such shellfish in their charge or possession in violation of the provisions of this act, and may seize in the name of the State of Virginia and take possession of any shellfish believed to be in violation of this act; and may seize and take possession of any vessel, boat, craft, or other thing used in violation of any of the provisions of this act, together with the cargo of such vessel, boat, or craft; and any vessel, boat, craft, or other thing, together with the cargo so seized, may be held by the official making the seizure or the official in whose district the same was seized, until the accused has paid the penalty of his offense, if upon trial he is found guilty, or has upon trial been acquitted, as the case may be. Any person or persons impeding, hindering, or interfering with the said commissioners, their agents, or assistants, or persons appointed by either of the said commissioners in the discharge of their duties in carrying out the provisions of this act, shall be guilty of a violation of the provisions of this act. Any person or persons, firm, or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$25 for the first offense, and for any subsequent offense not less than \$50, or may be punished by imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court, and such fines shall be paid into the treasury of the State through the oyster officials as in the case of all fines imposed and collected for violations of the oyster laws; and, in addition to the penalties herein provided, the shellfish taken from areas and waters contrary to the provisions of this act shall be forfeited to the State: *Provided, however,* That when an oyster inspector is directly instrumental in apprehending and bringing to trial an offender, against whom a fine is imposed and collected under this act, one-fourth of the fine shall go to the said inspector and the remaining three-fourths shall be paid to the auditor of public accounts, and credited as are all other fines imposed for violation of the oyster laws.

SEC. 5. Penalty.—The person liable for any fine for violation of this act may pay the officer directly instrumental in apprehending such person such sum as may be agreed upon between such person and officer and all costs; and thereupon such person shall be discharged from all legal proceedings that may be instituted against him for such offense: *Provided,* That the amount so agreed upon be not less than the minimum fine imposed for such offense, any such agreement to be in the nature of a compromise, and not to be used as evidence in any proceeding for such violation.

SEC. 6. Enforcement.—The dairy and food commissioner and the commissioner of fisheries of the State are hereby charged with the enforcement of the provisions of this act; and for the purpose of carrying out the provisions of this act, the said dairy and food commissioner and the said commissioner of fisheries are hereby authorized to make uniform rules and regulations in accordance with the provisions of this act; and it shall be the duty of every Commonwealth's attorney to whom the dairy and food commissioner or the commissioner of fisheries shall report any violation of this act to cause the proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed.

[ACTS OF 1916, CHAP. 360.]

SECTION 1. Definition of "waterworks."—The term waterworks," whenever used in this act, shall be construed to mean and include all structures and appliances used in connection with the collection, storage, purification, and

treatment of water for drinking or domestic use and the distribution thereof to the public or more than 25 individuals, except only the piping and fixtures inside the buildings where such water is delivered. The term "water supply," whenever used in this act, shall be construed to mean and include water that shall have been taken into waterworks as hereinbefore defined from all streams, springs, lakes, and other bodies of surface water, natural or impounded, and the tributaries thereto, and all impounded ground water: *Provided*, That nothing in this act shall be held to apply to any waters above the point of intake of such waterworks.

Sec. 2. State board of health to have control of water supplies.—The State board of health shall have general supervision and control, in accordance with the provisions of this act, over all water supplies and waterworks in the State in so far as the sanitary and physical quality of waters furnished may affect the public health or comfort.

Sec. 3. Examination of water supplies.—Said board may cause examination of such water supplies to be made to ascertain their purity and fitness for drinking or domestic use or their liability to impair the public health.

Sec. 4. State board shall advise local authorities.—Said board shall, when requested, consult with and advise the authorities of cities and towns and persons having, or intending to have, waterworks installed as to the most appropriate source of water supply and the best method of assuring its purity without any expense to such authorities or persons; but said board shall not prepare plans, specifications, or detailed estimates for any proposed improvement.

Sec. 5. Permit required for construction or extension of waterworks.—No individual, firm, institution, corporation, or municipal corporation shall supply water for drinking or domestic purposes to the public within the State from or by means of any waterworks that shall hereafter be constructed or extended either in whole or in part, without a written permit from the State board of health for the supplying of such water; except that this provision shall not apply to the extension of water pipes for the distribution of water.

The application for such a permit shall be accompanied by a certified copy of the maps, plans, and specifications for the construction of such waterworks or extensions, and a description of the source or sources from which it is proposed to derive the supply and the manner of storage, purification, or treatment proposed for the supply previous to its delivery to consumers; and no other or additional source of supply shall subsequently be used for any such waterworks, nor any change in the manner of storage, purification, or treatment of the supply be made without an additional permit to be obtained in a similar manner from the State board of health. Whenever application shall be made to the State board of health for a permit under the provisions of this section it shall be the duty of said board to examine the application without delay, and as soon as practicable thereafter to issue said permit if, in its judgment the proposed supply appears not to be prejudicial to the public health or to make an order stating the conditions under which said permit will be granted.

Sec. 6. Persons in charge of waterworks to furnish information to State board.—Whenever an investigation of any water supply or waterworks within the boundaries of the State is undertaken by the State board of health to ascertain the purity or fitness of the water furnished to the public for drinking or domestic purposes, it shall be the duty of the individual, firm, institution, corporation, or municipal corporation having in charge the water supply or waterworks under investigation to furnish, on demand, to the State board of health, or the authorized agent of said board such information rela-

tive to the source or sources from which the said supply is derived, and the manner of storage, purification, or treatment of the water before its delivery to the consumers as may be necessary or desirable for the determination of its sanitary or physical quality. In making said investigation authorized agents of said board shall be allowed to enter any premises or buildings constituting a part of a water supply or waterworks for the purpose of inspecting same and ascertaining whether orders as provided for under this act are obeyed.

Sec. 7. State board to order changes in plants where conditions menace health.—When, upon investigation, the State board of health finds that a water supply furnished to the public for drinking or domestic purposes is a menace to health, said board is hereby given authority to make an order requiring such changes in the source or sources of said water supply or such alterations or extensions in the waterworks as said board may deem necessary. Said board shall name in its order such date for the completion of the works as said board may deem reasonable and proper, and it shall be the duty of the individual, firm, institution, corporation, or municipal corporation having in charge such water supply or waterworks to fully comply with said order within the time prescribed. As soon as said order of the State board of health, or the modified form of the order of the court, as hereinafter provided for, shall have been shown, upon investigation, to have been complied with fully, said board shall issue a written permit to the individual, firm, institution, corporation, or municipal corporation to furnish water to the public for drinking or domestic purposes.

Sec. 8. Permits are revocable.—Every permit issued by the State board of health under this act shall be revocable at any time it is shown by investigation that the waterworks can no longer be depended upon to furnish a water safe for drinking or domestic use, or that the capacity of said waterworks is inadequate for the purpose of furnishing water safe for drinking or domestic use, provided that a written notice is sent by said board to the individual, firm, institution, corporation, or municipal corporation in charge, together with an order requiring such changes in the water supply or waterworks as in its judgment may be necessary to safeguard the public health. Any permit issued by the State board of health may be specified to run a certain definite period, and said permit shall become inoperative at the expiration of the period of time without notice to that effect having been given by the State board of health.

Sec. 9. Board to grant hearings.—Whenever the board shall issue an order to an individual, firm, institution, or corporation under the provisions of this act said board shall appoint a time and place within the county, city, or town where such waterworks exist for a hearing on the subject, said hearing to be not less than two nor more than six months from the entry of such order. At such a hearing the State board of health shall attend in person or shall depute a committee of said board to attend or shall authorize the State health commissioner to act for and in the name of said board touching said hearing. At any such hearing all persons interested may appear and be heard and may present the testimony of expert and other witnesses, and said board may hear witnesses called upon its own motion. The State board of health shall have power to issue, in the name of the board, subpoenas for the attendance of witnesses and the production of books, papers, and maps relative to the sources of the water supply and the manner of storage, purification, or treatment of said supply before its delivery to the public, at any hearing before said board in any part of the State, as provided by law. The officer of said board presiding at any hearing shall have power to administer oaths and certify to all official acts of the board. After such hearings said board shall issue such final order as in its

judgment may be required to protect the public health, and notice of said final order shall be sent to all parties concerned.

SEC. 10. *Appeal from decision of State board of health.*—Any individual, firm, institution, or corporation dissatisfied with such order or final order of, or by the granting or refusal to grant any permit by the State board of health, or believing that such order granting or refusal to grant such permit to be illegal or unreasonable or that said order is not necessary for the protection of the public health, may, within 30 days after the making of said order or final order or the granting or refusal to grant such permit, appeal to any court of competent jurisdiction, and the said court shall render a decision approving, setting aside, or modifying the said order or final order or stating the conditions for the granting of said permit.

SEC. 11. *Penalty.*—Failure on the part of an individual, firm, institution, or corporation to obtain a written permit from the State board of health, as provided for under 5, or to comply fully with an order issued by said board, under the provisions of this act shall be deemed a misdemeanor and punishable by a fine of not less than \$20 nor more than \$100 for each offense, each day in which such failure is made being considered to constitute a separate offense. All penalties under this act are to be recovered by the State in civil action brought by the attorney general in the name of the Commonwealth.

SEC. 12. *Mandamus against cities.*—Any municipal corporation disobeying any order duly issued by the State board of health, under the provisions of this act, may be compelled to obey same by mandamus or other appropriate remedy by any court of competent jurisdiction.

SEC. 13. *Attorney general to represent board.*—In all actions and proceedings for the enforcement of orders of the State board of health, under the provisions of this act, the attorney general shall represent the said board, except in proceedings to which the State or any of its public institutions is a party defendant, and in such cases the board is authorized to employ special counsel.

[WATER-CLOSETS AND PRIVIES. REG. BD. OF H., MAY 5, 1916.]

4. *Prohibition of soil pollution.*—Every house or other place used as human habitation in the State, every place of business and every pleasure, recreation, or construction camp, shall be provided with a decent closet or privy where human excrement is so disposed of that the excrement can not endanger a source of drinking water and can not be accessible to flies or animals.

5. No person, firm, or corporation shall maintain or permit on premises owned by him any arrangement for the disposal of human excrement which may possibly endanger a source of drinking water or be accessible to flies or animals.

6. No person shall deposit any human excrement upon the surface of the ground or in any place where it may be exposed to flies or animals.

[WATER SUPPLY AND PURIFICATION SYSTEMS. REG. BD. OF H., MAY 5, 1916.]

1. *Date of application and required form.*—The information required by the State board of health in considering an application for a permit to supply water for drinking or domestic purposes to the public within the State of Virginia shall be submitted to the board at least two weeks in advance of the date on which it is proposed to begin work on the waterworks or extensions thereof and shall be submitted in the following scope and order:

(a) Application for permit.

(b) General and detail plans of proposed system or extension of existing system.

(c) Engineer's report.

(d) Specifications.

2. *Application for permit.*—The application for a permit and for the approval of plans shall be made by the individual, firm, institution, corporation, or municipal authorities for whom the work is to be done, or by their properly authorized agents, upon blank forms, which will be furnished by the health commissioner, said forms to be signed by the person, corporation, or officer applying for the permit and to be acknowledged before a notary.

3. *General and detail plans, form.*—One full set of general and detail plans shall be submitted with the application for a permit. Each plan shall be drawn to scale, shall be a true copy of the original, correct to date, and shall be a white, blue, or black line print or print from a reduced engraving. Pencil sketches will not be accepted. Copies of plans submitted will not be returned after submission unless revision is necessary or unless they have been presented for a preliminary review only. All copies of plans remaining in the hands of the board, after action thereon, are public records.

4. *Title of plans.*—In the lower right-hand corner of each separate drawing shall be placed a proper title containing name of individual, firm, institution, corporation, or municipality for whom it is made, the name of the locality to which it refers, a proper description of the nature of the drawing, the scale date, and the name of the consulting or designing engineer. On each plan showing the locality, distribution system, or street layout the points of the compass shall be indicated.

5. *General layout of proposed systems or extensions.*—The general plan or map for a proposed waterworks system or the extension of an existing system shall show the location of all pipe lines and special structures, such as intake, pumping station, purification plant, reservoir, etc., with sizes or capacities clearly indicated. The size of pipe mains shall be written along the pipe; the location of hydrants, valves, and any special structures shall be shown and referenced in a legend near the title; and elevations of the principal parts of the system, such as water at intake, pumping station, purification plant, reservoir, etc., shall be given. If any part of the system, such as pumping station or purification plant, is subject to flooding, the elevation of the highest known flood water shall be given.

6. *Details of special units or structures.*—Complete detail plans of all special units and structures, such as intake, pumping station, reservoir, blow-offs, conduits, etc. (except those of standard cast-iron pipe) shall be submitted. Profiles of long conduits or pipe lines by which water is brought from a distance, either by gravity or by pumping, shall be shown. All emergency connections and valves by which water can be turned into the distribution system from any auxiliary or industrial supply shall be shown in detail and location of each indicated on the general plan.

7. *Details of purification plants.*—Plans for purification works shall include a general drawing, showing the layout of the various units, together with the piping system and reserve areas or future extensions indicated. The detail drawings shall include longitudinal and transverse sections sufficient to show the construction of each unit and part of the plant, special devices for feeding chemicals, for draining units, and such other information as is required for an intelligent understanding of the plans. Detailed designs of filter equipment submitted by filter companies, and made a part of the plans, shall be submitted for approval before construction of the plant begins.

8. *Details of wells and connections.*—Plans shall be submitted showing the depths and sizes of wells, the kind and depth of casing used, together with all

connecting pipe, valves, etc., and the layout of pumping stations, together with the arrangement and size of all suction pipe, force mains, and valves.

9. *Engineer's report.*—A comprehensive report written by the designing or consulting engineer shall be submitted with the plans, said report to be typewritten upon letter-size paper (8½ by 11 inches). The report shall contain the principal data upon which the designs were based and also information relative to the source of supply and methods of purification, in particular as follows:

(a) *Surface supply without purification.*—Nature and approximate area of watershed with special reference to any possible source of the contamination of the supply and methods recommended to prevent such contamination. Storage capacity and approximate dimensions of reservoir or lake, character of water, etc., shall also be discussed.

(b) *Surface supply with purification.*—General character of water with special reference to sewage pollution of stream within a distance of 5 miles above the intake. The purification plant shall be described with reference to the capacity of the plant as a whole and the capacity of each unit, rates of operation of each unit, chemicals to be used, and methods of application, any peculiar local conditions taken into account in the design, any special methods necessary in the maintenance and operation of the plant, and what degree of purification is expected or guaranteed.

(c) *Ground water supply.*—Full description of well or spring, nature of geological formation of the region, possible sources of contamination, means provided to prevent such contamination, character of the water, etc. Any available information or records of tests relative to the capacity or flow of the well or spring shall be given.

10. *Specifications.*—One copy of the detailed specifications covering all work to be done shall be submitted with plans for a new waterworks system or plans for the extension of or changes in an existing system. Specifications merely describing the general character of the work will not be accepted as sufficient. Specifications shall be on letter-size paper (8½ by 11 inches), except when printed in book form.

11. *Deviations from plans.*—There shall be no deviations from plans submitted to and approved by the board unless amended plans showing proposed changes shall be forwarded and approved by said board. Copies of approved plans, specifications, engineer's report, and application must be approved by and filed with the board before the contract is let.

WASHINGTON.

[CODES AND STATUTES, 1915.]

2266. *Punishment of misdemeanor when not fixed by statutes.*—Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for not more than 90 days, or by a fine of not more than \$250. (Laws, 1909, p. 894.)

2516. *Willfully poisoning springs, etc.*—* * * every person who shall willfully poison any spring, well, or reservoir of water shall be punished by imprisonment in the State penitentiary for not less than five years, or by a fine of not less than \$1,000. (Laws, 1909, p. 972.)

2537. *Deposit of unwholesome substance.*—Every person who shall deposit, leave or keep on or near a highway or route of public travel, on land or water, any unwholesome substance; or who shall establish, maintain, or carry on upon or

near a highway or route of public travel, on land or water, any business, trade, or manufacture which is noisome or detrimental to the public health; or who shall deposit or cast into any lake, creek, or river, wholly or partly in this State, the offal from or the dead body of any animal, shall be guilty of a gross misdemeanor. (Laws, 1900, p. 978.)

2542. *Polluting springs and other sources of water supply.*—Every person who shall deposit or suffer to be deposited in any spring, well, stream, river, or lake, the water of which is or may be used for drinking purposes, or on any property owned, leased, or otherwise controlled by any municipal corporation, corporation, or person as a watershed or drainage basin for a public or private water system, any matter or thing whatever, dangerous or deleterious to health, or any matter or thing which may or could pollute the waters of such spring, well, stream, river, lake, or water system shall be guilty of a gross misdemeanor. (Laws, 1900, p. 979.)

2543. *Furnishing impure water.*—Every owner, agent, manager, operator, or other person having charge of any waterworks furnishing water for public or private use, who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity or healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor. (Laws, 1900, p. 979.)

5150-81. *Casting waste into waters of State.*—It shall be unlawful to cast or pass or to suffer or permit to be cast or passed into any waters of this State, either fresh or salt, within such distance from any incorporated city or town, any dead fish, heads or offal or other waste from any fish cannery, as the commissioner of public health may determine. (Laws, 1915, p. 103.)

5150-82. *Casting sawdust and trade wastes into waters of the State.*—It shall be unlawful to cast or pass or to suffer or permit to be cast or passed into any waters of this State, either fresh or salt, any sawdust, planer shavings, wood pulp, or other wastes, lime, gas, coculus indicus, chemical substances, or any refuse or waste material or matter deleterious to fish or shellfish, at any time whatsoever: *Provided, however,* That nothing in this act [section] contained shall be construed as prohibiting the depositing of coal-mine waste or drainage in any waters either fresh or salt. Any person who shall violate any provision of this act [section] shall be guilty of a misdemeanor. (Laws, 1915, p. 230.)

5150-117. *Penalty.*—Any person who shall violate or who shall fail to observe, obey, and comply with the provisions of this act for which no penalty is herein prescribed, shall be guilty of a misdemeanor.¹ (Laws, 1915, p. 116.)

5395-48. *Using poison with intent to take game fish.*—No person shall * * * use or prepare any drug, poison, lime, medicated bait, * * * fish berries * * * or any other deleterious substance whatever, * * * in any of the waters of this State with intent thereby to catch, take, or kill any game fish. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. (Laws, 1913, p. 378.)

5395-50. *Casting sawdust in rivers or streams.*—Every person who shall cast or discharge or permit to be cast or discharged into any waters of this State any sawdust, planer shavings, or other lumber waste, shall be guilty of a misdemeanor.² (Laws, 1913, p. 379.)

5406. *Rules and regulations of State board of health—Investigation of water supplies.*—* * * The board [State board of health] may have special or

¹ This section applies to section 5150-81.

² See section 5150-82 above. Section 5150-82 appears in a law referring to "food fish," 5395-50 in a law referring to "game fish."

standing orders or regulations for the prevention of the spread of contagious or infectious diseases, and for governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as admit of and may best be controlled by universal rule. * * * It shall respond promptly, when called upon by the State or local government and municipal or township boards of health, to investigate and report upon the water supply, sewerage, disposal of excreta * * * of any place or public building. (Laws, 1901, p. 236.)

7507. *Cities of first class may prevent pollution of water supplies.*—Any such city [city of first class—20,000 or more population] shall have power—

(30) * * * to regulate and control, and to prevent and punish, the defilement or pollution of all streams running through or into its corporate limits, or for the distance of 5 miles beyond its corporate limits, and on any stream or lake from which the water supply of said city is taken for a distance of 5 miles beyond its source of supply * * *. (Laws, 1890, p. 218.)

7612. *Cities of second class may prevent pollution of water supplies.*—The city council of such city [city of second class—10,000 to 20,000 population] shall have power and authority—

(53) * * * to regulate and control and provide for the prevention and punishment of the defilement or pollution of all streams running in or through its corporate limits and a distance of 5 miles beyond its corporate limits, and of any stream or lake from which the water supply of said city is or may be taken and for a distance of 5 miles beyond its source of supply * * *. (Laws, 1907, p. 364.)

7671-14. *Cities of third class may prevent pollution of water supplies.*—The city council of such city [third-class cities—1,500 to 10,000 population] shall have power—

(h) * * * to purify and prevent the pollution of streams of water, lakes, or other sources of supply, and for this purpose shall have jurisdiction over all streams, lakes, or other sources of supply, both within and without the city limits. Such city shall have power to provide by ordinance and to enforce such punishment or penalty as the city council may deem proper for the offense of polluting or in any manner obstructing or interfering with the water supply of such city or source thereof. (Laws, 1915, p. 655.)

7731. *Towns may prevent pollution of water supplies.*—The council of said town [towns or cities of fourth class—population less than 1,500] shall have power—

(11) * * * to prevent the pollution of streams of water running through such town, and for this purpose shall have jurisdiction for 2 miles in either direction * * *. (Laws, 1890, p. 201.)

7823. *Penalty for pollution municipal water supply.*—Any person who shall place or cause to be placed within any watershed from which any city or municipal corporation of any adjoining State obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute, or impair the quality of said water supply, or the owner of any dead animal who shall knowingly leave or cause to be left the carcass or any portion thereof within any such watershed in such condition as to in any way corrupt or pollute such water supply, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine in any sum not exceeding \$500. (Laws, 1909, p. 18.)

7990. *Municipal jurisdiction over water supplies.*—For the purpose of protecting the water furnished to the inhabitants of towns and cities within this State from pollution, the said towns and cities are hereby given jurisdiction over all property occupied by the works, reservoirs, systems, springs, branches, and pipes, by means of which, and of all the lakes, rivers, springs, streams, creeks,

or tributaries constituting the sources of supply from which such cities or towns or the companies or individuals furnishing water to the inhabitants of such cities or towns obtain their supply of water, or store or conduct the same, and over all property acquired for any of the foregoing works or purposes or for the preservation and protection of the purity of the water supply, and over all property within the areas draining into the lakes, rivers, springs, streams, creeks, or tributaries constituting such sources of supply whether the same, or any thereof, be within the corporate limits of such town or city or outside thereof; and authority is hereby conferred upon such towns and cities to prescribe by ordinance what acts shall constitute offenses against the purity of such water supply and the punishment or penalties therefor and to enforce said ordinances; and the mayor of such town or city is hereby authorized to appoint special policemen, with such compensation as the proper authorities of said town or city may fix, who shall, after taking oath, have the powers of constables under the laws of this State, and who may arrest with or without warrant any person committing, within the territory over which such town or city is given jurisdiction by this act, any offense declared by law of this State, or by any ordinance of such town or city, against the purity of such water supply, or any violation of any rule or regulation lawfully promulgated by the State board of health for the protection of the purity of such water supply. Such policeman shall be, and he is hereby, authorized to forthwith take any such person arrested for any such offense or violation aforesaid, before any court having jurisdiction thereof to be proceeded with according to law. Every such special policeman shall, when on duty, wear in plain view a badge or shield bearing the words "Special police" and the name of the town or city for which he shall be appointed as aforesaid. (Laws, 1899, p. 114, as amended by Laws, 1907, p. 562.)

7901. *Pollution of water supplies declared a nuisance.*—The establishment or maintenance of any slaughter pen, stock-feeding yards, hogpens, or the deposit or maintenance of any uncleanly or unwholesome substance, or the conduct of any business or occupation, or the allowing of any condition upon or sufficiently near the sources from which the supply of water for the inhabitants of any such city or town is obtained, or where such water is stored, or the property or means through which the same may be conveyed or conducted so that such water would be polluted or the purity of such water or any part thereof destroyed or endangered, is hereby prohibited and declared to be unlawful, and is hereby declared to be and constitute a nuisance, and as such to be abated as other nuisances are abated under the provisions of the existing laws of the State of Washington, or under the laws which may be hereafter enacted in relation to the abatement thereof; and that any person or persons who shall do, establish, maintain, or create any of the things hereby prohibited for the purpose of or which shall have the effect of polluting any such sources of water supply or water, or shall do any of the things hereby declared to be unlawful, shall be deemed guilty of creating and maintaining a nuisance and may be prosecuted therefor, and upon conviction thereof may be fined in any sum not exceeding \$500. (Laws, 1899, p. 115.)

7902. *Procedure in case nuisance is committed.*—If upon the trial of any person or persons for the violation of any of the provisions of this chapter such person or persons shall be found guilty of creating or maintaining a nuisance as hereby defined, or of violating any of the provisions of this chapter, it shall be the duty of such person or persons to forthwith abate such nuisance, and in the event of their failure so to do within one day after such conviction, unless further time be granted by the court, a warrant shall be issued by the court wherein such conviction was obtained, directed to the sheriff of the county in

which such nuisance exists, and the sheriff shall forthwith proceed to abate the said nuisance, and the cost thereof shall be taxed against the party so convicted as a part of the costs of such case. (Laws, 1899, p. 115.)

7993. *Local authorities to enforce this act.*—It is hereby made the duty of the city health officer, city physician, board of public health, mayor of the city, or such other officer as may have the sanitary condition of such city or town in charge, to see that the provisions of this chapter are enforced and upon complaint being made to any such officer to immediately investigate the said complaint; and if the same shall appear to be well founded, it shall be, and is hereby, declared to be the duty of such officer to proceed and file a complaint against the person or persons violating any of the provisions of this chapter and cause the arrest and prosecution of such person or persons. (Laws, 1899, p. 116.)

7994. *Injunctions against maintenance of nuisances on watersheds.*—Any city supplied with water from any source of supply as hereinbefore mentioned, or any corporation owning water works for the purpose of supplying any city or the inhabitants thereof with water in the event that any of the provisions of this chapter are being violated by any person, may, by civil action in the superior court of the proper county, have the maintenance of the nuisance which pollutes or tends to pollute the said water, as provided for by section 7991, enjoined, and such injunction may be perpetual. (Laws, 1899, p. 116.)

8308. *Putting body of dead animal in watercourse, etc., a public nuisance.*—It is a public nuisance—

1. To cause or suffer the carcass of any animal or any offal, filth, or noisome substance to be collected, deposited or to remain in any place to the prejudice of others;

2. To throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any watercourse, stream, lake, pond, spring, well, or common sewer * * * or in any manner to corrupt or render unwholesome or impure the water of any such spring, stream, pond, lake, or well, to the injury or prejudice of others. (Laws, 1895, p. 19.)

8316. *Civil action.*—A private person may maintain a civil action for a public nuisance, if it is specially injurious to himself, but not otherwise. (Laws, 1875, p. 80.)

8320. *Punishment for public nuisance.*—Whoever is convicted of erecting, causing, or contriving a public or common nuisance, as described in this title [secs. 8307-8323], or at common law, when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be punished by a fine not exceeding \$1,000, and the court, with or without such fine, may order such nuisance to be abated, and issue a warrant as hereinafter provided.¹ (Laws, 1875, p. 81.)

[COMMUNICABLE DISEASES.—PREVENTION OF THE SPREAD OF, THROUGH FOOD OR DRINK. REG. BD. OF H., JULY 15, 1912.]

SEC. 8. 1. No city or town shall hereafter empty or discharge its sewage into any body of water or stream used for drinking purposes by any municipality until such sewage has been rendered harmless by some method approved by the State board of health.

2. The use, except by diversion, of the waters of any natural or artificial storage or distributing reservoir of any public-water supply for any commercial or industrial purpose, is hereby prohibited.

3. Camping, picnicing, or hunting upon the watershed, or boating, fishing, or bathing in the waters of any public-water supply is hereby prohibited.

¹ It appears unnecessary to give the process of abatement of nuisances.

4. No person shall cut or store any natural ice to be sold or delivered within any incorporated city without first receiving a permit from the local health officer, which permit shall certify that the proposed source of such ice has been inspected and approved, and no natural ice stored or cut without such permit shall be sold in any incorporated city in this State.

WEST VIRGINIA.

[CODE, 1916, CHAP. 47, CITIES, TOWNS, AND VILLAGES.]

28. *Cities, towns, and villages may prevent pollution of water supplies.*—The council of such city, town, or village shall have plenary power and authority therein * * * to prevent injury to or pollution of the same [waterworks], or to the water or healthfulness thereof * * *. (Acts of 1882, chap. 92, as amended by acts of 1905, chap. 53.)

[CODE, 1916, CHAP. 62, FISH, GAME, FORESTS, AND STREAMS.]

45a. *Depositing in streams matter injurious to fish; drainage of water from mines.*—It shall be unlawful for any person, firm, or corporation to throw, discharge, or cause to enter into any stream, watercourse, or water in this State sawdust or other matter deleterious to the propagation of fish. It shall be lawful, however, to drain or cause to be drained from any mine in the State by the owner or operator thereof the water that naturally collects in such mine and the water from any coal washery, and to discharge the same into any stream, watercourse, or water in the State: *Provided, however,* That any mine from which the water is so discharged or drained shall be kept in a sanitary condition and the water draining or flowing from such mine, and from such washery, shall, while in the mine and on the premises of the mine owner or operator, be kept free from pollution by human or animal excrement or substance deleterious to health. And the State board of health, its agents, employees, and servants shall at all seasonable times have authority to enter upon the premises and into any such mine in order to see that the same is kept in a sanitary condition and that the waters draining therefrom are free from the objectionable substance named herein; with the right to the State board of health to prevent any mine owner or mine operator who fails to comply with the provisions of this act [section] from draining or discharging the water or waters from his or its mine into any stream, water, or watercourse in the State: *Provided further,* That any mine owner or operator having one suitable, convenient, and sufficient outlet for the water from his or its mine into one stream shall not cause the same to be drained into any other stream. Any person, firm, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and fined not less than \$15 nor more than \$100 for each and every such offense: *Provided,* That no prosecution to enforce this section shall be instituted or conducted without the consent and approval of the forest, game, and fish warden; such consent to be evidenced in writing and filed and entered of record in the court or before the justice and in his docket, in which or before whom the prosecution is begun or pending. (Acts of 1903, chap. 47, as amended by second extra session, 1915, chap. 5.)

47. *Use of drugs to kill fish.*—It shall be unlawful for any person to kill or attempt to kill any fish * * * by the use of any poisonous drug, substance, bait, or food or by the use of * * * lime or other thing of like nature. And the placing of any such articles in any stream, pond, or lake shall be deemed and taken to be prima facie proof of intention to violate this section. Any person violating this section shall be guilty of a felony and upon conviction

tion thereof shall be confined in the penitentiary for a period not less than six months nor more than two years, and may, at the discretion of the court, be fined not less than \$50 nor more than \$200. (Acts 1867, p. 72, as amended by 1909, chap. 60.)

48. *Furnishing drugs, etc., for use in killing fish.*—It shall be unlawful for any person, firm, or corporation to sell, give, or furnish, directly or indirectly, * * * any poisonous drug, bait, or food to any person when such person, firm, or corporation knows or has reason to believe that * * * such poisonous drug, bait, or food are intended to be used for the purpose of killing fish. Any person, firm, or corporation violating this section shall be guilty of a misdemeanor and upon conviction thereof shall for each offense be fined not less than \$25 nor more than \$100, and may, at the discretion of the court, be confined in the county jail not exceeding 30 days. (Acts, 1909, chap. 60.)

[CODE, 1916, CHAP. 144, OFFENSES AGAINST THE PERSON.]

7. *Pollution of water supply with intent to injure.*—If any person * * * poison any spring, well, or reservoir of water, with intent to kill or injure another person, he shall be confined in the penitentiary not less than 3 nor more than 18 years. (Acts, 1882, chap. 118.)

[CODE 1916, CHAP. 150, PUBLIC HEALTH.]

1. (2) *Commissioner of health to inspect sanitary condition of streams.*—His [commissioner of health's] duties shall be to * * * inspect and report the sanitary conditions of streams, sources of water supply, and sewerage facilities * * *.

2. *Rules and regulations of State department of health.*—* * * Whenever the character and location of plumbing, drainage, water supply, sewers, and disposal of sewage, garbage, or other waste materials of cities, towns, and villages, offensive trades, hotels, and labor camps * * * are such as to endanger the public health, the public health council shall have power to make and enforce rules regulating the same. It shall promulgate and recommend regulations, not inconsistent with law, governing the disposal of excreta in coal mines, * * *. Nothing herein contained shall be construed to give the State department of health the power to regulate or interfere with the drainage from any mine or manufacturing plant unless the drainage from said mine or manufacturing plant shall contain disease-producing bacteria in sufficient numbers to endanger health. * * * (Acts, 1915, chap. 11.)

20c. *Depositing dead animals, etc., in waters used for domestic purposes.*—If any person or persons shall knowingly and willfully throw or cause to be thrown into any well, cistern, spring, brook, or branch of running water which is used for domestic purposes any dead animal, carcass or part thereof, or any putrid, nauseous, or offensive substance, he or they shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$5 nor more than \$100 and may, at the discretion of the jury, be confined in the jail of the county not exceeding 90 days, and shall, moreover, be liable to the party injured in a civil action for damages. (Acts, 1872-3, chap. 176.)

20d. (1) *Depositing dead animals, slops, or putrid substance in waters of State.*—It shall be unlawful to put the carcass of any dead animal, or the offal from any slaughterhouse, butcher's establishment, or packing house, or slop or other refuse, from any hotel or a tavern, or any spoiled meats or spoiled fish, or any putrid animal substance, or the contents of any privy vault, upon or into any river, creek, or other stream within this State * * *. (Acts, 1887, chap. 25.)

(3) *Penalty.*—A justice of the peace shall have jurisdiction of any offense against the provisions of this act [20d (1)], committed within his county. Any such offense shall be punished by a fine of not less than \$5 nor more than \$50 * * *. Upon conviction for any such offense the accused must bury at least 3 feet under the ground, or destroy by fire, any of the things named in the first section [20d (1)], which he has placed in any of the waters * * * named in such section * * * within 24 hours after such conviction; and if he shall fail so to do, the justice shall further fine him not less than \$10 nor more than \$50. (Acts, 1887, chap. 25.)

WISCONSIN.

[STATUTES 1915.]

1406m. *Water survey and examination of water supplies.*—* * *. 4. The purpose of this laboratory [State laboratory of hygiene] shall be to undertake the examination of water supplies for domestic purposes * * *. The examination of water supplies shall include the establishment of a water survey of the State * * *.

1407. *Water-supply plans to be approved by the State board of health.*—* * *. Before any city or village shall institute a water system or system for water supply for the domestic use of its inhabitants, or a system of sewerage for the disposition of its sewage, such city or village shall submit to the State board of health the plans and specifications for such system, and both of the water system and the sewerage system if a sewerage system exists or is proposed, and the State board of health shall examine such plans and specifications for the proposed system and the sanitary and hygienic features thereof; and no such system shall be installed or put in operation until the State board of health shall issue its certificate that such proposed system will not be in any respect insanitary or dangerous to the public health.

1407a-6. *Rules and regulations of State board of health.*—* * *. 3. The board [State board of health] shall have power to adopt and enforce rules and regulations governing the duties of all health officers and health boards, and any violation of said rules shall be punished by a fine of not less than \$10 nor more than \$100 for each offense. * * *

4. All rules and regulations adopted and published by the State board of health * * * shall be in force and shall be prima facie lawful; and all such * * * rules and regulations shall be valid and in force and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose or until altered or revoked by the State board of health. * * *

1407m. *Survey of sanitary properties of water supplies.*—1. The State board of health is authorized to act with the United States Geological Survey in determining sanitary and other conditions and nature of the natural water supplies of the State of Wisconsin, such water survey to have for its objects:

(a) To determine the nature and condition of the unpolluted natural water supplies of the State.

(b) To determine to what extent the natural waters are being contaminated by sewerage [sic] from cities.

(c) To determine to what extent the natural waters are being polluted by industrial wastes, such as come from glucose factories, creameries, and such other sources which produce pollution, and in what way these wastes might be utilized for beneficial purposes.

(d) To investigate water-borne diseases and assist in determining the best source of water supplies.

2. The State board of health is hereby empowered and instructed to make such rules and regulations in conjunction with the United States Geological Department as may be necessary to carry into effect the provisions of this act.

1407m-1. *Pollution of streams, etc.; complaints; investigation; notification.*—Whenever the common council, town board, village board, or board of health of any city, incorporated village, or township makes complaint in writing to the State board of health that a city, village, corporation, or person is discharging or permitting to be discharged any sewerage [sic] or other waste into any stream, watercourse, lake, or pond, and is thereby creating a public nuisance detrimental to health or comfort, or is polluting the source of any public water supply, it shall be the duty of the State board of health to forthwith investigate, or cause to be investigated, the conditions complained of; and whenever the State board of health finds after careful investigation that the source of public water supply of any city, village, or community in this State is being subject to contamination, or has been rendered impure by reason of discharge of sewerage or other wastes, or whenever said board finds that such sewerage or other waste have so corrupted any stream, watercourse, lake or pond, and that that contamination, impurity, or corruption is detrimental to the public health, it shall notify such city, village, corporation, or person causing the contamination, corruption, or pollution of any such stream, watercourse, lake, pond, or banks adjacent thereto, of its findings.

1407m-2. *Notice in writing; approval of governor.*—The State board of health through its executive secretary shall notify such city, village, corporation, or person in writing, setting forth the decision of the board in regard to the conditions complained of. The city, village, corporation, or person shall be given an opportunity to be heard within 15 days after receiving the decision of the board. If after such hearing the State board of health determines that improvements or changes are necessary for the preservation of health and should be made, it shall report its findings to the governor, and upon his approval said board shall notify such city, village, corporation, or person to install such works as may be necessary for purifying or otherwise disposing of its sewage or other wastes, so as to preserve the public health, or to change or enlarge existing works in such manner as may be necessary to preserve the public health; such works or means must be completed and put into operation within a time to be fixed by said board.

1407m-3. *Appeal from orders of board; referee engineers.*—If in any case any order of the State board of health, when approved by the governor and made in pursuance to the provisions of sections 1407m-1 to 1407m-6 inclusive, is not acceptable to any city, village, corporation, or owner affected thereby, such city, village, corporation, or owner shall have the right of appeal as follows, to wit: The necessity for and reasonableness of such order may be submitted to two reputable and experienced sanitary engineers, one to be chosen by the city, village, corporation, or owner to which such order of the State board of health applies, and the other chosen by the State board of health, who shall not be regularly employed by said board, and who shall act as referee engineers. If the engineers so chosen are unable to agree, then they shall choose a third engineer of like standing, and the vote of the majority shall be the decision of the referee engineers. The referee engineers herein provided for shall affirm or modify the order of the State board of health submitted to them so as to preserve the public health when necessary or reasonable to do so, and their decision, as reported in writing to the State board of health, with recommendations, which shall be rendered within a reasonable time, shall be enforced by said board in the manner provided for in sections 1407m-1 to

1407m-6, inclusive. The fees and expenses of said referee engineers shall be paid by the city, village, corporation, or owner requesting such referee.

1407m-4. *Use of impure ice prohibited.*—No town, city, village, public institution, individual, or water or ice company shall use water or ice which is so contaminated, unwholesome, and impure that the use thereof endangers the public health. The State board of health, after full investigation of the facts, may prohibit any town, city, village, public institution, individual, or water or ice company from using water which is so contaminated, unwholesome, and impure that the use thereof endangers the public health; and the circuit court shall have jurisdiction and power, upon application therefor by the State board of health, to enforce by proper order and decree the orders, rules, and regulations of the said board of health, made under and by virtue of this section for the protection of the public health.

1407m-5. *Penalty.*—If any council, department, or officer of any municipality, or person, or private corporation shall fail or refuse to do and perform any act or acts required of him, it, or them to be done and performed by sections 1407m-1 to 1407m-6, inclusive, such members of the council or department and such officer or officers or person or private corporation shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum of not more than \$500 nor less than \$100 for each offense.

1407m-6. *Duty of attorney general.*—It shall be the duty of the attorney general to act as legal adviser to the State board of health, and assist such board in the enforcement of the provisions of sections 1407m-1 to 1407m-6, inclusive.

1418. *Maintaining slaughterhouse on bank of river, etc.*—No person shall erect, maintain, or keep any slaughterhouse upon the bank of any river, running stream, or creek, or throw, or deposit therein any dead animal or any part thereof, or any of the carcass or offal therefrom; nor throw or deposit the same into or upon the banks of any river, stream, or creek, which shall flow through any city, village, or organized town containing 200 or more inhabitants * * *; and every person who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished for each such violation, by a fine of not less than \$10 nor more than \$100, or by imprisonment in the county jail not exceeding six months; and the mayor of the city, president of the village, and the chairman of the town in which any such slaughterhouse is located shall have power to and shall cause the same to be immediately removed; and every such officer who shall knowingly permit any slaughterhouse to be used or maintained contrary to the provisions of this section shall forfeit not less than \$15 nor more than \$50. * * *

1454. *Cemeteries not to be built near watering places.*—1. No person, association, or corporation shall lay out or establish any cemetery grounds or use any lot or grounds for burial purposes (except such as are now in use for such purposes) * * * within 15 rods of any * * * watering place * * *.

2. Any violation hereof shall be deemed a nuisance and may be restrained by injunction at the suit of any person * * *.

62.32.¹ *Fishing with stupefactive or medicated bait; depositing deleterious substance in waters.*—(1) Except as expressly provided in this chapter, no person shall take, capture, or kill fish of any variety in any waters of this State by means of * * * poisonous or stupefying substances; * * *.

¹ A decimal system is used for numbering sections recently added to the Wisconsin statutes. The "62" refers to the number of the chapter.

(2) Except as expressly provided in this chapter, no person shall use, set, lay, or prepare in any of the waters of this State any lime, poison, medicated bait, fish berries, or any other substance deleterious to fish life * * *.

(3) Except as expressly provided in this chapter, no person shall cast, deposit, or throw overboard from any boat, vessel, or other craft into any waters within the jurisdiction of the State, or deposit or leave upon the ice thereof until it melts, any fish offal [meaning dead fish, or the head, intestines, blood, and cleanings of fish];¹ or throw or deposit, or permit to be thrown or deposited, into any waters within the jurisdiction of the State any lime, tanbark, ship ballast, stone, sand, slabs, decayed wood, sawdust, sawmill refuse, planing-mill shavings, or any acids or chemicals or waste or refuse arising from the manufacture of pulp, paper or beet sugar, or any other substance deleterious to fish life other than authorized drainage and sewage from municipalities.

(4) Subsection (3) shall not apply to Kickapoo River; Pine River, in Richland County; Balsam Branch, in Polk County; Chippewa River, from the mouth of Thornapple River to its mouth; Flambeau River, from the dam at Ladysmith to its mouth; Jump River, from its fork in town 34 north, range 2 west, to its mouth; Leavitt Creek that empties into Jump River in town 33 north, range 3 west; Black River, from the Falls Dam down to the boundary of Jackson County; and Wisconsin River, from the north boundary line of the city of Rhinelander to its mouth.

1636—197. *Pure-water supply for tenement houses, etc.*—Every apartment house, tenement house, lodging or boarding house shall have water furnished in sufficient quantity at one or more places on each floor occupied by one or more families, provided the said apartment, tenement, lodging or boarding house is located on a street or alley supplied with the city water pipes. When said building is not so situated a sufficient supply of wholesome water shall be provided on a part of the lot where it will not be contaminated from closets, barns, garbage, or other sources of impurity."

4384. *Prohibiting poisoning of spring.*—Any person who * * * shall willfully poison any spring, well, or reservoir of water, with such intent [to kill or injure any other person], shall be punished by imprisonment in the State prison not more than 10 years nor less than 1 year.

4468a. *Interference with free use of water a misdemeanor.*—Any person who shall wantonly interfere with the free use of the water from any spring or in any creek or stream running across or in any highway shall be guilty of a misdemeanor and be liable to any person damaged thereby for all damages sustained.

4562d. *Penalty for violating certain fish laws.*—(1) Any person who, for himself, or by his agent, servant, or employee, or who, as agent, servant, or employee for another, violates any of the provisions of chapter 62 of the statutes, relating to wild animals, is guilty of a misdemeanor, and shall, in addition to any other liability, forfeiture, or penalty prescribed in said chapter for such violation, be punished, respectively, as follows:

(b) For any violation of * * * subsections (1) or (2) of section 62.32, prohibiting the use of * * * poisons, stupefactive, and medicated baits * * * by a fine of not less than \$50 nor more than \$150, or by imprisonment in the county jail not less than 60 days nor more than 90 days, or by both such fine and imprisonment.

(c) For any violation of any other provision of said chapter, by a fine of not less than \$25 nor more than \$100, or by imprisonment in the county jail not less than 30 days nor more than 90 days, or by both such fine and imprisonment.

¹ Given in brackets in Wisconsin Statutes of 1915.

4570a. *Throwing mill waste into waters.*—Any person who shall carry, throw into or in any manner deposit in any lake or bay within this State connected with the great chain of lakes and navigable for vessels or steamers, or cause so to be carried, thrown, or deposited therein, any sawdust, shavings, edgings, or other mill waste shall be punished for the first offense by fine not exceeding \$10; and for any subsequent offense committed within 1 year from conviction by fine not exceeding \$20, or imprisonment in the county jail not more than 1 month nor less than 10 days. * * *

4607k. *Impure ice.*—No person or corporation shall sell or offer for sale or cause the same to be done within this State, for domestic, culinary, or drinking purposes, any ice which contains mud, decayed vegetation, animal or foreign matter, or malarial substance. Every person or corporation offering ice for sale shall have posted on his or its wagons, in a conspicuous manner, the name of the place from which the ice so offered for sale was cut, harvested, or manufactured, and all persons or corporations dealing in or handling impure ice, to be used for cooling purposes only, shall have their wagons so labeled. Any person who, or corporation which, violates any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than \$50 nor more than \$100.

[INDUSTRIAL CAMPS—SANITARY REGULATION. REG. Bd. OF H., JAN. 9, 1914.]

REGULATION 1. Hereafter operators, contractors, and all other persons who may establish an industrial camp or camps for the purpose of logging, ice cutting, or any like industry, or for the purpose of construction of any road, railroad, or other work requiring the maintenance of camps for men engaged in such work, or any other temporary or permanent industrial camp of whatever nature, shall report to the State health officer concerning the location of such camp or camps, and shall arrange and maintain such camp or camps in a sanitary condition as outlined in these regulations.

Reg. 2. The term "camp," as used in these regulations shall include any lumbering, mining, railway construction, or other camp where men are employed and housed in temporary quarters, such as cars, tents, buildings, or other inclosures other than the bona fide homes of the employees.

Reg. 4. The general scheme of the structure of the camps should be as follows: Stable and kitchens should be separated by a distance as great as consistent with the natural topography of the land and so located as to prevent any pollution of the water supply with the necessity for convenient access to the stables. The stables and toilets for the men in the camp must be so located that their natural drainage is away from the water supply.

Reg. 5. The use of the toilets provided for the men should be made obligatory, and instant discharge of any employees polluting the soil must be rigidly enforced.

Reg. 11. Waste water from the kitchen, wash, and bunk houses in summer camps must be carried to trenches lined with quicklime and at a safe distance from water supply.

Reg. 13. The supply of water for the camp should be carefully decided upon, and an adequate supply free from any possible chance of contamination must be provided.

Reg. 19. Privy vaults shall be so constructed at every camp that they can be effectively cleaned of the contents. Pits shall not be less than 4 feet in depth, and the contents shall be treated daily, when used during the summer season, either by a solution of milk of lime (strong whitewash of fresh slaked lime), 1 gallon to every square yard of pit, or the sprinkling of 5 pounds of

powdered chloride of lime to the same area. A liberal sprinkling of fresh chloride of lime shall also be applied daily to the floors of privies and lavatories. All closets shall be at least 100 feet distant from the water supply, and so located that drainage from privy vaults toward water supply is impossible.

WYOMING.

[COMPILED STATUTES, 1910.]

1608. *Town council may prevent pollution of water supply.*—* * * the town council shall enact ordinances * * * to prevent the pollution of the water [supply] * * *.

1609. *Town council may acquire property outside of limits for waterworks and may prevent water being polluted.*—For the purpose of establishing or supplying waterworks any town may go beyond its territorial limits and may take, hold, and acquire property by purchase or otherwise; * * * and the jurisdiction of the town to prevent or punish any pollution or injury to the stream or source of water, or to such waterworks, shall extend 10 miles beyond its corporate limits, or so far as such waterworks may extend.

1808. *Jurisdiction of city to prevent pollution of water supplies outside of city.*—The corporation constructing such waterworks [for supplying city with water] shall have the right to extend the same beyond the corporate limits of the city or town, and the jurisdiction of such city or town, for the purpose of maintaining and protecting the same from injury and the water from pollution, shall extend over the entire territory occupied by such works.

1876. *Acquisition of water beyond corporate limits to prevent pollution, etc.*—For the purpose of carrying out any of the powers conferred by this chapter [chap. 129, entitled "Waterworks—Bonds"] any city or town may go beyond its corporate limits and may take, hold, and acquire property by purchase or otherwise. It shall have power to take and condemn all necessary lands and property therefor, in the manner provided by the laws of the State, relating to the condemnation of real estate by railroad companies, and for the purpose of preventing any pollution or injury to the streams, spring, or source of supply of its waterworks, ditches, or reservoirs its jurisdiction shall extend up and along such stream or source of supply for a distance not exceeding 10 miles beyond its corporate limits, or further if such water supply shall be obtained at a greater distance, and shall include and extend over the entire distance occupied by such waterworks, ditches, or reservoirs.

2815. *Contamination of streams by industrial wastes.*—Any owner or owners of any sawmill, reduction works, smelter, milling, refining, or concentration works, or other manufacturing or industrial works, or any agent, servant, or employee thereof, or any other person or persons whomsoever, who shall throw or deposit in, or in any way permit to pass into any natural stream or lake within this State, wherein are living fish, any sawdust, chemicals, mill tailings, or other refuse matter or deleterious substances, or poisons of any kind or character whatsoever, that will or may tend to the destruction or driving away from such waters any fish, or kill or destroy any fish therein, or that will or may tend to pollute, contaminate, render impure or unfit for domestic, irrigation, stock, or any other purpose for which appropriated and used, the waters of any such natural stream or lake * * * shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$50 or more than \$100, or shall be imprisoned in the county jail not less than 30 days or more than six months, or both such fine and imprisonment for each offense; and where any of the foregoing unlawful acts are committed continuously each

of the days upon which committed shall be treated and considered as a separate and distinct offense: *Provided*, That nothing in this or the succeeding section shall apply to the slag from smelter furnaces.

2816. *Use of poisons for destroying fish, etc.*—Any person who shall kill or destroy [any fish] in any of the waters of this State by the use of any poison or deleterious drug, chemical, or substance whatsoever * * * shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$50 nor more than \$200, and shall be imprisoned in the county jail not less than 90 days or more than 6 months: *Provided*, That nothing in this section contained shall prevent the owner or owners of any quartz mill, reduction works, smelter, sawmill, or other manufacturing or industrial works in the State now located or to be hereafter located upon any natural stream or lake, or other collection of waters, from operating or working said quartz mill, reduction works, sawmill, or other manufacturing or industrial works if the said owner or owners thereof shall build or cause to be built a suitable dam to be used in connection with said quartz mill, smelter, reduction works, sawmill, or other manufacturing or industrial works, which dam shall be so constructed as to prevent any fallings, sawdust, chemicals, or other refuse, deleterious, or poisonous substances from passing into such stream or lake which shall destroy or drive away the fish or any number of them from said stream, lake, or other waters, or pollute, contaminate, render impure, or unfit such waters for domestic, stock, irrigation, or other uses for which appropriated, * * *.

2938. *State board of health to investigate pollution public water supplies.*—Said board is authorized and empowered to investigate and ascertain, as far as possible, in relation to the pollution of streams and natural waters of this State by artificial causes, or of all waterworks and water systems belonging to any city or town in this State and supplying water for the inhabitants thereof, which in their judgment may be necessary to determine the sanitary and economic effects of such pollution, and to enter in and upon the grounds, buildings, and premises, waterworks, reservoirs, pipe lines, pump houses, and everything connected with the collection and distribution of water to the inhabitants of any city or town; to make, institute, and conduct useful experiments pertaining thereto, and shall have power to summon witnesses, administer oaths, and hear evidence relating to such matters, and to make full report to the city or town authorities of their operations and investigations in writing; and it shall be the duty of all such officers, when notified of any unsanitary conditions of streets, alleys, sidewalks, waterworks, or other public ways, structures, or improvements under their control, to at once take steps to repair, cleanse, abate, or destroy the same.

2952. *Rules and regulations of State board of health.*—The State board of health shall have power to prescribe rules and regulations for the management and control of communicable diseases, and to prescribe and fix penalties for the violation or refusal to obey such rules and regulations. And any person or persons violating or refusing to obey such rules and regulations or resisting or interfering with any officer or agent of said State board of health while in the performance of his duties shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by the imposition of such penalty as may have been designated by the said State board of health for the violation of said rule or regulation. Or, in the discretion of the court, said person may be punished by a fine of not more than \$100, or imprisonment not exceeding 30 days, or both such fine of \$100 and imprisonment for 30 days.

5805. *Pollution of water supply with intent to injure.*—Whoever poisons any spring, well, cistern, or reservoir of water, with intent to injure or kill any human being, shall be imprisoned in the penitentiary not more than 14 years.

5058. *Pollution or obstruction of watercourses.*—If any person, company, or corporation * * * shall in anywise pollute or obstruct any watercourse, lake, pond, marsh, or common sewer, or continue such obstruction or pollution, so as to render the same unwholesome or offensive to the county, city, town, or neighborhood thereabouts; every person, company, or corporation so offending shall, upon conviction thereof, be fined not more than \$100; and every such nuisance may, by order of the district court before whom conviction may take place, be removed or abated by the sheriff of the proper county.

5065. *Deposition of carcasses, etc., in watercourses.*—If any person or persons association of persons, company, or corporation shall deposit, place or put, or cause to be deposited, placed or put, upon or into any river, creek, bay, pond, canal, ditch, lake, stream, * * * the carcass of any dead animal, or the offal or refuse matter from any slaughterhouse, butcher's establishment, meat market, packing house, fish house, hogpen, stable, or any spoiled meats, spoiled fish, or any animal or vegetable matter in a putrid or decayed state, or liable to become putrid, decayed, or offensive, or the contents of any privy vault, or any offensive matter or substance whatever, or shall cause to be maintained any privy, slaughterhouse, meat market, or any other or different place, building, or establishment, that shall directly or indirectly be the cause of polluting the waters of any spring, reservoir, stream, lake, or water supply used wholly or partly for domestic purposes, or if the owner or owners, tenant or tenants, occupant or occupants of any lands or tenements, dwellings or places of business, or any other and different places or localities, whether defined in this section or not, shall knowingly permit any of the said offensive matters or substances, or any other and different offensive matters or substances to remain in any of the aforesaid places or other and different places or localities, or shall permit any of the aforesaid places to be maintained which shall cause the pollution of any stream, spring, reservoir, lake, or water supply, either directly or indirectly, in any locality, place, or situation in this State, to the annoyance of the citizens or residents of this State, or any of them, or to the detriment of the public health, or who shall neglect or refuse to remove or abate the nuisance, offense, or inconvenience occasioned or caused thereby within 24 hours after knowledge of the existence of such nuisance, offense, or inconvenience, in or upon any of the above-described premises or places, or any other and different place or locality, owned or occupied by him, her, it, or they, or after notice in writing from the sheriff, deputy sheriff, or coroner of any county in this State, or the constable of any precinct, or the marshal or any of the policemen of any city, town, or village in which said nuisance shall exist, or from any peace officer in this State of the locality wherein such nuisance shall exist, every such person so offending shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$10 nor more than \$50, and if such nuisance is not abated within 48 hours after the same is created or exists to the knowledge of such offender, or within 48 hours after said written notice is given, such failure to abate such nuisance shall be deemed a second offense against the provisions of this section, and every like failure and neglect to abate such nuisance of every 24 hours thereafter shall be considered an additional offense, and shall be subject to a like penalty as herein provided.

5066. *Nuisance to be abated.*—It shall be the duty of the officer mentioned in the preceding section, who shall receive notice, or who shall have knowledge of any such nuisance as is therein defined and mentioned, to cause the same to be abated and removed forthwith, if the owner or owners, occupant or occu-

pants of said premises neglect or fail so to do, and all of the expenses of abating and removing the same shall be chargeable to the party or parties creating, causing, or permitting the continuance of such nuisance, and in favor of the officer causing the same to be abated and removed; * * *

5067. *Pollution of water supply with sawdust.*—If any person or persons who may own, run, or have charge of any sawmill in this State shall throw or permit the sawdust therefrom to be thrown or placed in any manner into any river, stream, creek, bay, pond, lake, canal, ditch, or other watercourse in this State, such person or persons shall be liable to a like penalty as is provided in section 5065.

DO NOT DESTROY—

*When you have no further use for this
pamphlet give it to someone else.*

